

# *Lex Constitutionis :* OR, THE **Gentleman's Law**

BEING,

A Compleat TREATISE of all the LAWS and STATUTES relating to the KING, and the Prerogative of the Crown; the Nobility, and House of Lords; House of Commons; Officers of State; the Exchequer and Treasury; Commissioners and Officers of the Customs; of the Excise; of the Post-Office; Stamp-Office; Forfeited Estates; Publick Accounts; the Navy-Office; War-Office; Lieutenancy of Counties; Justices of Peace, &c. Wherein near One hundred Authors of the best Reputation, both ancient and modern, on the Subject, have been consulted, and are refer'd to.

AND ALSO,

An Introduction to the COMMON LAW of England, with Respect to Tenures of Lands, Descents, Marriage-Contracts, Coverture, &c. Of Property, Creation and Forfeiture of Estates; Trials of Offenders, Courts at Westminster, &c.

To which are added, under their proper HEADS,

The Manner of Passing BILLS in both Houses of Parliament, the Judicature of the Lords; Variety of adjudg'd Cases; and some curious History of Antiquity.

By G. JACOB, Gent.

K

*Perdiscendum Jus Civile; cognoscendæ Leges; percipiendæ omnis Antiquitas; senatoria Consuetudo, Disciplina Reipublicæ, cognoscenda est.*  
Cicer. de Orat. L. 1.

In the S A V O R:

Printed by Eliz. Nutt and R. Gosling, (Assigns of Edward Sayer, Esq;) for W. Lintor, between the Temple-Gates, Fleet-Street. M DCC XIX.



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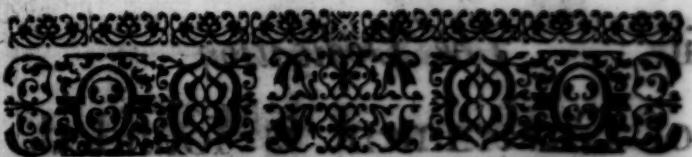
An Introduction to the COMMON LAW of  
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By G. JACOB, Esq.



Printed by G. G. and J. B. in the Strand, near St. Dunstons Church, in the Year 1703.



as ment gnayl to noind  
Your

To His Royal Highness,  
Prince, are to be their

**G E O R G E**

Prince of *Wales*

so pretisable are our

Laws of Government to

those of all other Nations

May it please Your Royal Highness,

**T**HE natural Desire  
Your Royal High-  
ness entertains to  
be inform'd of the

Laws and Statutes on which  
Our excellent Constitution

ii. *The Dedication.*

of Government is founded,  
fills me with an honest Am-  
bition of laying Them at  
Your Feet; **YOU**, *Illustrious*  
*Prince*, are to be their future  
*Guardian and Defender*; and in  
Your Royal Highness they  
have already found a power-  
ful Protector.

**S O** preferable are our  
Laws of Government to  
those of all other Nations,  
that the *British* Monarch is  
Inferior to none for Glory  
and Magnificence, yet in-  
valuable Liberty at the same  
Time Flourishes: **THE KING**  
is not only Great, but his  
Subjects are Happy; and as  
his

his Grandeur is in the highest Degree extensive, so is our Felicity.

I BY the Perusal of these incomparable Laws, Your Royal Highness, tho' You are very well acquainted with our Constitution, may agreeably discover some Things a Novelty, of the greatest Use and Importance in a well regulated Government; of which, no Kingdom can more largely Boast than *Great Britain*, the Example to *Europe*, and to the whole World.

I have endeavour'd at a Pleasure and Satisfaction to  
Your



Your Royal Highness, but  
 on Your gracious Construc-  
 tion depends my Success;  
 and I hope You will pardon  
 my aspiring Presumption. I  
 am, with all Duty and Sub-  
 mission,

*May it please Your Royal Highness*

*Your Royal Highness's*

*Most Obedient, and*

*Most Devoted,*

*Humble Servant,*

GILES JACOB.

Your

P R E-



# PREFACE

**A**CCORDING to the Opinion of an ingenious Author, there never was a Time, I believe, in England, when the Original of Government in general has been so much the Subject of Writing and Discourse, and the particular Frame of the Constitution under which we live so little understood, as it has been of late, and is at present.

**T**HIS Consideration has been the principal Motive to my present Undertaking; and my Subject I have pursued with such an entire Regard to the

## VI P R E F A C E.

Use of a Treatise of this Kind, that the Reader will not only be enabled to judge of the Powers and Prerogatives of the Governors to whom our Obedience is due; but also, of the Rights and Liberties of the People.

MY Introduction to the Common Law sets forth the One, and the Body of my Performance illustrates the Other: Here you may see what is Law, what Remedy the Constitution has provided against any emergent Mischief, and what Restrictions have been laid upon the Actions of Men for the Support of Government, and Welfare of the Kingdom.

THE Title Page to my Treatise is so copious, That I have very little Occasion to say any Thing farther; it is sufficient for me only to take Notice, that I have adapted this Work particularly to the Use of the Gentlemen of all Ranks, and those that

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that are employ'd in the Service of their Country: And to render it useful to my Profession, I have given all my Informations (which I have traced from the Conquest down) the Sanction of References to a very great Variety of our ancient and modern Writers of the best Authority.

Mr. Chamberlain, in his Present State of Great Britain, has made some Mention of our Laws in general, but he is so very short on that Head, that of Consequence his Performance must be liable to great Imperfection; nor has this Gentleman, whose Education hath been foreign to the Subject, for want of consulting Sir Edward Coke's incomparable Institutes, and other Books of the Law any Authorities to support those few Things he has enumerated, any Notice of the Statutes relating to the Nobility, and Officers of State, &c. or Introduction to the Common Law of England, or any History

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of Antiquity; and the Person that came after him, has done little more in the main, than taking a Collection from his Predecessor.

BUT I have been far from Copying after either of these Gentlemen, or indeed any other; my whole Scheme is perfectly different and new, for the following Sheets contain the substantial Part, viz. The Laws of our excellent Constitution in the most particular Manner, without any Addition of Geographical Descriptions, (in my Opinion too common and trifling for a Work of this Nature) and Lists of Officers, which are always incomplete.

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*Lex*



# *Lex Constitutionis:*

OR, THE

## Gentleman's LAW.

*Introduction to the COMMON LAW,  
of England, with Respect to Te-  
nures, Descents, &c.*

**I**N the World in General, there are very few Persons of any Degree or Quality but may find some Pleasure in an Enquiry into the Nature of Tenures and Holdings of Lands; a Business so little understood by the Gentleman of Fortune, who has a whole Country at his Disposal; or by his Tenants and Vassals, the immediate Possessors and Managers of his Patrimony: And I doubt not but a Communication of this necessary and Important Knowledge will be acceptable in the Front of my Treatise, by Way of Introduction.

B

To

To this I shall subjoin, some useful Observations on Descent, Marriage-Contracts, Settlements, &c. whereby it will appear to whom (either by the Laws of the Kingdom, or particular Limitations) Estates in General belong, and how Property is obtain'd: the Offences which occasion a Forfeiture of Estates, as Treason, Felony, &c. And the Courts of Judicature, not only for Recovery and Defence of Rights of Inheritance, but for deciding all Controversies of *Meum* and *Tuum*, and Trespasses whatsoever. And first concerning Tenures.

The Original of the Law, the Immortal *Littleton*, tells us, That the largest Estate of Inheritance is Fee-simple; which is where a Person is seisd, by Descent or Purchase, of Manors, Lands, or Tenements, to hold to him and his Heirs for ever. And it is call'd in *Latin*, *Feodum Simplex*, as *Feodum* signifies Inheritance, and *Simplex* is as much as to say lawful and pure, or simply without Restraint to a Man's Heirs; so that those Words are in Signification a lawful and unlimited Estate in the highest Degree. But if a Man purchase Lands, and the Conveyance runs only To Have and to Hold to the Purchaser for ever, or to him and his Assigns for ever, he hath thereby no greater an Estate than for Life; the Words, *his Heirs*, being omitted, which alone make the Inheritance. *Co. Lit. 1.*

And Persons having Lands or Tenements in Fee-simple, either by Purchase or Descent, may make any Disposition thereof at their Pleasure, by Conveyance executed in their Lives, or by last Will and Testament.

The next Tenure to Fee-simple, is *Fee tail*; an Estate to one and his Heirs with Limitation, &c. this Estate was created by the Statute of *Westminster*,

*ster,*

## The Gentleman's Law.

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fer, for at Common Law all Inheritances were Fee-simple. And Fee-tail is either General or Special; General, where Lands or Tenements are given to a Man, and the Heirs of his Body begotten, or to a Woman and the Heirs of her Body begotten; in which case Issue by all the Wives which the Man shall marry may possibly inherit by Force of the Gift to him; and all the Issue by every Husband of the Woman may inherit by Vertue of the Tail settled on her. And Fee-tail Special is where it is certainly set down of whom the Issue shall proceed; as when Lands are granted to a Man and his Wife, and the Heirs of their two Bodies, and in this Case the Issue only by that Wife may inherit. It is call'd Special-tail, because if the Wife die, and the Husband marries a second Wife, and have Issue, such Issue has no Benefit, as in Case of the General-tail. *Co. Lit.* 19, 20.

The Word *Body*, which makes the Tail, may be restrain'd to either Males or Females; and if Lands or Tenements be given to Husband and Wife, and the Heirs of the Body of the Husband, the Husband hath an Estate in Tail, and the Wife only for Life; and if to his Heirs which he shall beget on his Wife, it creates a Special-tail in the Husband, but the Wife will be entituled to Nothing. Intails are usually created upon Marriage-Settlements, and in every Gift in Tail where no further Estate is granted, the Reversion of Fee-simple is in the Donor. Tenant in Tail can make no greater Estate than for his own Life; nor Grant a Lease in Reversion, but for Twenty-one Years, or three Lives in Possession he may, reserving the antient Rent, &c. And if it be of the Wife's Inheritance, she is to be made a Party. *Co. Lit.* 22, 26, 32. *H. 8. c. 28.*

*Fee tail after Possibility of Issue extinct*, is carv'd out of a Special Estate-tail; (as an Estate-tail is from a Fee-simple) and is where Lands or Tenements are given to a Man and his Wife in Special-tail, if either of them die without Issue, the Survivor is Tenant in Tail, after Possibility of Issue extinct; and if there be Issue, and such Issue, die so as there is none alive to inherit by Force of the Tail, it is the same. Tenants in Tail, and in Tail after Possibility extinct, are not punishable for Waste, as are Tenants for Life, &c. *Co. Lit.* 27, 28.

Besides these Tenures of Fee-simple, Fee-tail, &c. there are Tenants by the Curtesie of *England*, Tenants in Dower, Tenants for Life, for Term of Years, Tenants at Will, by Copy of Court-Roll, &c. *Lit. Tenures.*

*Tenancy by the Curtesie of England*, so call'd from its not being us'd in any other Kingdom but *England*, is an Estate cast upon a Husband, of the Wife's Lands, consummated by her Death; and is created by a Man's taking a Wife seised of Lands in Fee-simple, or in Fee-tail General, or as Heir in Special-tail, and having Issue by the same Wife; Male or Female, born alive; if the Wife die, the Husband shall hold the Estate during his Life. *Lit. Ten.* 18.

If a Woman Tenant in Tail General takes a Husband, and hath Issue by him, which Issue dieth, and the Wife also some time afterwards dies without any further Issue, the Husband shall be Tenant by the Curtesie; for tho' the Estate-tail be determin'd, yet he was entitl'd to be Tenant by the first Issue, before the Estate was spent. *Co. Lit.* 30.

*Tenancy in Dower* is a Provision for the Wife, commencing on the Death of the Husband; as  
where



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where a Man seised of Lands or Tenements in Fee-simple, Fee-tail General, or as Heir in Special-tail, marries a Wife and dies, the Wife after his Decease shall be endow'd of a third Part of the Lands or Tenements that were her Husband's at any Time during the Coverture, to hold during her Life, whether she have Issue by the Husband or not.

*Lit. Ten.* 19.

And a Woman might be endowed either at the Church-Door, or according to the Course of the Common Law; but the Wife shall not be endowed of Lands or Tenements that her Husband jointly held with another at the Time of his Death.

*Co. Lit.* 34, 36.

To the Consummation of Dower three Things are necessary, *viz.* Marriage, Seisin, and the Death of the Husband; and in former Times a Man after Marriage might, in his Life-time, assign to his Wife Certainty of Dower, to the End she should not be liable to any Expence in procuring her Right after his Decease. And *Anno. 9. H. 3.* a Man of the Age of Eighteen Years took a Wife, and by Assent of his Guardian endowed her, and adjudg'd a good Endowment, tho' the Husband died under Age. *Co. Lit.* 31, 34.

But by Statute, A Widow is to be assign'd her Dower by the Sheriff, immediately after the Death of her Husband; and she is to remain in the Chief House of her Husband, if it be not a Castle, 'till she is endow'd, not exceeding Forty Days. And she shall be assign'd the third Part of all the Lands which were her Husband's in his Life-time. *9 H. 3. cap. 7.*

*Tenant for Term of Life* is when Lands or Tenements are let to another for the Life of the Lessee, or of some other Person; tho' it is generally taken for Term of the Lessee's Life: And every

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Person



Person that hath an Estate in Lands for Life, is called a Freehold Tenant ; but this is understood to be the least Estate of Freehold. *Lit. Ten.* 28, 29.

If a Tenant in Fee-simple make a Lease of Lands to another, To Have and to Hold for Term of Life, without mentioning for whose Life it shall be, it shall be taken for the Life of the Lessee ; and an Estate for a Man's own Life is of a higher Nature than for the Life of another. If one grant Lands, or Tenements, Reversions, Remainders, &c. to a Person, and express no Estate, the Lessee or Grantee hath an Estate for Life: And if a Man retain a Servant generally without expressing any Time, the Law shall construe it to be a Year. *Co. Lit.* 42.

*Tenant for Years* is no more than where a Man lets Lands or Tenements to another Person for a certain Term ; on the Lessee's entering by Force of the Lease, he is call'd Tenant for Term of Years. *Lit. Ten.* 30.

If a Man let Lands to another for Years, and dies before the Entry of the Lessee, yet may the Lessee enter into the Lands and Tenements: But if the Lessee refuses or neglects the Payment of the Rent, the Lessor, or other Person interested in the Estate, may either distrain for the same, and in five Days cause the Distress to be sold, leaving the Overplus in the Hands of the Sheriff, &c. for the Use of the Owner, or commence an Action of Debt against the Lessee. *Co. Lit.* 44.

And by a late Statute, where any Rents are reserved on Leases, if the Lessee clandestinely carries off any of his Goods from the Estate, the Lessor may in Five Days seize such Goods wheresoever found, as a Distress for the Rent in Arrear, and sell the same, if not already sold for a valuable Consideration ; and Persons having Rent in Arrear, may

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may take a Distress after the Expiration of the Term, provided it be done in Six Kalendar Months after the End of the Lease, and during the Continuance of the Landlord's Title, and the Tenant's Possession. 8 Ann. cap. 17.

A Lease for Years must have a certain Commencement and Determination, either by an express Enumeration of Years, or by a Reference to a Certainty; and there must be an Acceptance of the Things demis'd. Co. Lit. 45, &c.

*Tenant at Will* is where Lands or Tenements are let by one Person to another, To Have and to Hold at the Will of the Lessor; by Force of which Lease the Lessee enters and takes Possession; and he is call'd Tenant at Will, because he has no certain Estate, but is liable to be ejected whenever the Lessor pleaseth. Lit. Ten. 36.

But if the Lessee sow the Land he shall enjoy his Crop, tho' the Lessor should oust him, and shall have free Egress and Regress: But 'tis otherwise in Leases for Years, where a certain Term is express'd, if the Corn be not ripe 'till after the Expiration of the Lease; for in this Case the Lessor or he in Reversion shall have the Grain. Co. Lit. 55.

And Lessee, Tenant at Will, is not oblig'd to make good Reparations as Tenant for Term of Years; but if he commit voluntary Waste, as in pulling down of Houses, or felling of Trees, &c. the Lessor shall have Action of Trespass. Co. Lit. 57.

*Tenant by Copy of Court-Roll*, is where Tenants hold of their Lords for Lives, or in Fee, Lands or Tenements by Copy of the Court-Roll: And these Copyholders formerly had in Judgment of Law but an Estate at Will; but now by the Custom of the Manor they are descendible, and their

their Heirs shall inherit; tho' they shall not implead or be impleaded for any Thing relating to their Tenements by the King's Writ, but they are to enter a Plaint in the Court of the Lord. *Lit. Ten.* 40.

*Tenants by the Verge* are Copyholders, who on executing Surrenders deliver a little Rod or Verge to the Steward; they are likewise Tenants by the Custom of the Manor, and tho' they have Estate of Inheritance thereby, yet as they have no Freehold, at Common Law, it is esteem'd only a base Estate.

These are the common Tenures by which all Estates in *England* are at this Time held and enjoy'd; and I now advance to the Laws of Descent, Marriages, Coverture, &c. which I presume will be of general Use and Instruction to both Sexes, and the Issue of their lawful Embraces.

*Descent* (which is where a Man dies seis'd of Lands of Inheritance, without making any Disposition, so that it is left to the Law) is either Lineal or Collateral; Lineal is where it extends on a Right Line downward, from the Grandfather to the Father, from the Father to the Son, and the Son to the Nephew, &c. And what we call Collateral Descent, is a Branch from the Side of the whole Blood, as the Brother of the Grandfather, of the Father, of one Father and several Mothers, &c. *Bract. lib. 2. cap. 31. fol. 67. Co. Lit. fol. 19.*

A Line is threefold, Ascending to the Father, Descending to the Son, and Collateral for want of Issue to the next Relation. And as Lands descend to the Worthiest of Blood, so the elder Brother, and all his Progeny, shall be preferr'd to inherit before the Younger, or any of his Issue; and all the Females of the Part of the Father before any of the Males on the Side of the Mother; so strict is the Law in casting Descents upon the Right Heir, *Co. Lit. 12.*

And

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And if an Eldest Son having Issue die, and after his Decease the Youngest Son, or his Heir, enters, and many Descents be cast in his Line, yet may the Heirs of the Eldest Son make an Entry on the Lands; unless the Youngest Son conveys away the same by Feoffment in Fee, and the Feoffee die seisd, when the Privy of Blood of the Eldest Son ceases. *Co. Lit.* 242.

A Descent shall not take away the Entry of an Idiot, altho' the want of Understanding be perpetual; and if a Man *Non Compos* be disseised, and suffer a Discent, he shall never avoid it; but it shall take Place. *Co. Lit.* 247. Which shews that Ideots have the same Capacities, Advantages, and Disadvantages in Respect to Entries on Descents, as any other Persons whatsoever.

And if a Man be seised of Lands in Fee, and by his Last Will and Testament devises the same to another Person in Fee, by Vertue whereof the Freehold in Law is cast upon the Devisee after his Decease; if the Heir before any Entry made by the Devisee, takes upon him to enter, and by Force of such Entry dies seisd, yet this Descent shall not prejudice the Right of Entry of the Devisee. Adjudg'd in the Common Pleas, *Pasch.* 32 *Eliz.*

Neither shall a Descent take away the Entry of a Lessee for Years, Tenant by *Elegit*, &c. which are but Chattels; for by the Entry of such a Tenant upon the Heir by Descent, he takes no Freehold; but it is otherwise of an Estate for Life, or any higher Estate, as the Descent of a Freehold and Inheritance takes away the Entry of him that hath Right to a Freehold. *Lit. Ten.* 239.

Descent is the noblest and worthiest Means whereby Lands are deriv'd from one to another, as it is wrought and vested by the Act of the Law, and Right of Blood: And a Woman hath two immediate

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diate Bloods in her, *viz.* the Blood of her Father, and of her Mother, as well as a Man; so that if a Man marries a Woman, and hath a Son by her, such Son has four immediate Bloods in him, two of the Part of his Father, *viz.* of the Families of his Father and Mother, and two on the Side of the Mother, *i. e.* of the Families of her Father and Mother; and in both Cases upward, *ad Infinitum*: And if the Son make a Purchase of Lands in Fee, and die without Issue, first the Blood of the Father, *viz.* of his Father and Mother; and then the Blood of the Mother, *viz.* of her Father first, and afterwards of her Mother, shall inherit. *Co. Lit. 12.*

If a Father having purchas'd an Estate, the same descends to a Son, who enters and dies without Heirs; the Lands shall go to the Heirs of the Father or Mother of the Father, and not to the Heirs of the Mother of the Son; for altho' they are more near of Blood to him that was last seized, yet they are not of the Blood of the first Purchasor. *Noy. Max. 23.*

An Estate of Inheritance granted to a Man and his Heirs for ever always descends, and for want of Issue falls to a Man's Uncle or Brother, and his Heirs, which is the next of the whole Blood; for the half Blood shall not inherit. *Noy. p. 22.* And it is a Maxim in the Law, That whenever Lands descend on the Part of the Mother, the Heirs on the Part of the Father shall not inherit. And when Lands descend on the Part of the Father, the Heirs of the Mother shall never inherit. *Et sic paterna paternis, & è converso, materna maternis.* *Co. Lit. 13.*

But if a Man seiz'd of Lands as Heir of the Part of his Mother, executes a Conveyance in Fee, and takes back an Estate to him and his Heirs, this is

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a new Purchase, and if he dies without Issue, the Heirs of the Part of the Father shall inherit. And if a Person so seiz'd make a Feoffment in Fee upon Condition, and die, the Heir of the Part of the Father, which is Heir at Common Law, may enter for the Condition broken, but the Heir on the Side of the Mother shall enter upon him, and enjoy the Estate. *Co. Litt. 12.*

Where a Man seiz'd of Lands in Fee, having Issue by one Venter a Son and a Daughter, and by another Venter a Son only, dies; and the eldest Son makes an Entry, but dies likewise without Issue, the Daughter shall have the Land, and not the youngest Son, though he be Heir to the Father; for he is not Heir to his Brother. *Litt. Ten. 6.*

If there be no Heir male to an Estate in Fee-simple, &c. but divers Females, as Daughters, Sisters, &c. they shall inherit together, and are by the Law esteem'd but one Heir, call'd Parceners. *Co. Litt. 163.*

And as they are but one Heir, and yet several Persons, so have they one entire Freehold in the Land, as long as it remains undivided, in respect of Strangers; but between themselves to many Purposes they have in Judgment of Law several Freeholds, for the one of them may convey her Part to the other, &c. And this Coparceny is not sever'd by the Death of any of them, for in such Case the Part of the Person dying shall descend to her Issue. *17 E. 3. c. 46. 10 E. 4. 37 H. 6.*

In Partitions of Lands descended to Parceners, the Eldest shall chuse first; and if they have an Advowson, the Law gives the first Presentation to the Eldest, if they can't agree, and the second shall have the second Turn, & *sic de cæteris*, every one in Turn according to Seniority; and this Privilege extends

extends to the Heirs and Assigns of every Coparcener : The Inheritance by agreeing to present by Turn, is not divided, but they may join in a *Quare impedit* if any Stranger make a Usurpation. *Co. Inst. 2 Part, 365.*

The eldest Coparcener is to do Suit for the whole, but the Lord may distrain the other Parceners as well as the eldest, who may have a Writ against the eldest to compel her to do the Suit; and if the eldest having done the Suit, the others refuse to contribute to the Expence, she shall have a Writ to oblige them to a Contribution. *F. N. B. 160,*

If there be three Coparceners, and the eldest purchases the Part of the youngest, she shall have a Writ of Partition at the Common Law against the Middle Sister, & *sic de similibus*; And so it is if there be three Coparceners, and the eldest takes Husband, who purchases the Part of the youngest; for though the Husband for his Part be a Stranger, and no Parcener, yet he and his Wife shall maintain a Writ of Partition against the middle Sister. *Dyer 38.*

Where Lands descend in Fee, and a Partition is made by Parceners of full Age, and *sane memoria*, it binds them for ever, whether it be equal or unequal; but if it be of Lands entail'd, or if any of the Parties be *non sane memoria*, it binds only the Parties themselves for their Lives, and not their Issue, unless it be equal; for the Issue of her that has the lesser Part, may after her Decease disagree, and enter and occupy in Common the Part allotted to her Aunt. And if any Coparcener be a Feme covert, it shall bind the Husband, but not the Wife or her Heirs; or if any be within Age, it shall not bind the Infant. *Co. Lit. 166, 170.*

If a Man be seised of Lands in Fee, and hath Issue two Daughters, and one of the Daughters being

being attainted of Felony, the Father dies, both his Daughters being alive; in this Case one Moiety shall descend to the one Daughter as Heir, and the other Moiety shall escheat. *Fleta, c. 47.*

And as Persons attainted may not inherit, so a Son of an attainted Person, born before the Attainder of the Father, cannot be Heir; but if he be born after Pardon of the Father, (the eldest being dead, who might possibly inherit in Case of more Sons than one) he may; for the Pardon restores the Blood as to all Issues begotten afterwards. *Co. Litt. 8.*

A Bastard cannot be Heir to any; and 'tis well known that all Children born out of Wedlock, are Bastards; as are likewise Issue born before Marriage, tho' the Parties afterwards intermarry; Issue by a second Wife, the first living, and Children born during Marriage where a Husband is depriv'd of his genital Parts, are Bastards; but where the Man is of Ability, and a Child is born after Marriage, though never so soon or late, if the Husband be within the four Seas, such Child shall be lawful Heir to have and claim the Estate; which gave Occasion to a certain Author to observe, that the Laws in this Case are so favourable to the fair Sex, that one should imagine Women had the greatest Share in the making of them. *Co. Litt. 8. 47 E. 3. 18 H. 6. Roll. Abr. 358.*

An Alien may not be Heir though born in lawful Wedlock; but an Hermaphrodite, that partakes of both Sexes shall be Heir, either as Male or Female, according to the Predominancy of the Sex: Idiots, Outlaws in Debt, Hereticks, Persons excommunicate, &c. may be Heirs; and a Child born in second Marriage within nine Months after the first Husband's Death, may be Heir to the first



first or second Husband at his Election. *Bract. lib. 2. fol. 91. Co. Litt. 8.*

Heir apparent is the eldest Son in the Life-time of the Father; and no Heir to Lands coming by the Father; may inherit them until after his Father's Decease; but those descending from an Ancestor of the Mother, he may possess both in the Life of Father and Mother.

Having done with Descents, and Persons intitled to them, Heirs, &c. I come to *Marriage-Contracts, and the Laws of Coverture, &c.* Marriage-Contracts are made as a Provision for the Wife, and her Issue, after the Husband's Decease; and in a ludicrous Sense, they may be call'd the Conditions of Conjugal Enjoyment.

But the Man and Woman are not reputed one Person, nor doth he acquire any Property in her Lands or Goods, or the any Title to Dower by Force of a Marriage-Contract, unless they are join'd in Matrimony. *Swinb. Mat. Cont. p. 2.*

And a Promise of Marriage must be mutual, so that if a Man promise to marry a Woman, but she is silent, and make no Reply, this Contract is of no Force in Law. Neither can the silent Party be presum'd to consent without the same evidently appear by Words: But if the Promise be mutual, it cannot be dissolv'd, for they are reputed Husband and Wife; and if either of them should marry with any other Person, and consummate the same by carnal Copulation, whereby Procreation of Children ensues, the Marriage is unlawful, and the Parties are to be punish'd as Adulterers, &c. *Swinb. p. 8, 9, 10. &c.*

If any Persons having contracted Spousals, afterwards refuse to consummate the Marriage, they are by the Ecclesiastical Law, not only liable to Excommunication, but to Commitment to Prison, till

till they agree to celebrate the Nuptials: And a Man at fourteen Years of Age, and a Woman at twelve may contract Matrimony, for then they are presum'd to be of Discretion, and of Ability to perform the Duty of Marriage. *Swinb. 47.*

Fourteen is likewise the Age for an Heir to chuse his Guardian, and at the Age of twelve a Man is to take the Oath of Allegiance; but neither a Man nor Woman may alienate Lands, Goods and Chattels till twenty-one. *Co. Litt. 78.*

By Marriage with a Woman who hath an Estate in Freehold, a Man gaineth such Estate in Freehold, and he may enter, &c. If she have a Term of Years, he is possess'd in her Right, and hath Power to dispose of it by Demise or Grant; and if she have Goods and Chattels, by the Intermarriage, they immediately become the Husband's. *Co. Litt. 351.*

But if a Feme sole possess'd of a Chattel real, be afterwards dispossest'd thereof, and then taking Husband, she dies; this Right is not given to the Husband by Marriage, but to her Executors or Administrators; *contra* if the Right accrues during the Coverture. *Ibid.*

And if a Husband and Wife, as in Right of the Wife, have Title to enter into Lands or Tenements which another hath in Fee, &c. and such other die seised, &c. In such Case the Entry of the Husband is taken away in respect to the Heir, who is in by Descent; but if the Husband die, then the Wife may well enter, for that no Laches of the Husband shall turn to the Prejudice of the Wife or her Heirs. *Litt. Ten. 235.*

And as a Feme covert may enter upon others, having Right after the Death of her Husband, so may others enter upon her. As if a Woman seised of Land in Fee to which I am entitled, take Husband;

band; and having Issue between them, the Wife afterwards dies seiz'd, the Husband likewise dies, and their Issue enter: Now in this Case I may make an Entry upon the Possession of the Issue. *Litt. Ten.* 230.

A Man by Marriage being entitled to the Estate and Fortune of his Wife, is liable to the Payment of her Debts; so that if a Woman sole be indebted, and then take Husband, it is now become the Debt of the Husband and Wife, and both are to be sued for it; but after the Death of the Wife, the Husband is not liable, unless there be a Judgment obtain'd against them both during Marriage. *Pract. Reg.* 105.

An Action of Debt likewise lies against the Husband for Goods delivered or sold to the Wife; for the Law presumes they must come to the Use and Possession of the Husband, and the Husband and Wife are but one Person. *Pract. Reg.* 102. But a Wife shall not be sued for a Husband's Debt. See *Noy p.* 19.

If a Feme covert enter into any Agreement, her Husband may disagree to it; for she may not make any Contract without his Consent; and if she bargain and sell any Thing, if the Buyer knows her to be a Feme covert, the Contract shall not be binding, unless it be for such Things as she usually trades for by the Consent of her Husband. *Co. Inst.* 2 Part 713. Contracts of Infants are likewise void, but they are liable to pay for Meat, Drink, Cloths, and other Necessaries. 18 E. 4. c. 3.

But a Man must answer for the Trespasses of his Wife; and if a married Woman be assaulted and beaten, if the Husband thereby is deprived of her Service or Conversation, he alone may commence an Action of Trespass; in like manner as for Hurt done his Servant, &c. 3 Co. 113. 20 H. 5. &c.

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If a Feme covert slander any Person, the Husband and Wife must be sued for it. But for scandalous Words against a Man and his Wife, the Husband may prosecute one Action alone for his own Slander, and afterwards join in an Action with his Wife for hers. *Style Rep.* 113.

In Case of Banishment of the Husband, a Feme covert may act as lawfully as the Husband might, if he were not dead in Law. *Stat. Westm. 2. c. 3.*

A Man and his Wife are so much accounted one Person in Law, that she cannot be produc'd as an Evidence for or against her Husband, unless it be in criminal Cases where she is the Party griev'd, Treasons, &c. Neither may a Man during the Coverture, make any Gift or Conveyance to his Wife, but he may settle Lands in Trustees for her Use; or devise them by Will, because the Devise doth not take Effect till after the Decease of the Devisor. *Co. Litt.* 112.

And a Woman being parted from her Husband, and having an Estate to her self, may devise it by Will; she may likewise in such a Case sue her Husband for Alimony, or separate Maintenance. *Torbil* 94, 97.

A Widow being about to marry, to prevent her Husband's Disposal of the Land, conveys it to Friends in Trust, who with her Husband make a Sale of it; she commenc'd a Suit in Chancery, and the Court decreed, That the Purchaser should reconvey it to her, though he gave a valuable Consideration for the Estate. *Torbil* 43.

This naturally leads me to what by the Common Law we call a *Jointure*; which is, where the Husband or some other Friend of his assures unto his Wife, Lands or Tenements for Term of her Life, to take Effect presently in Possession or Profit, after the Decease of the Husband, in Consideration



tion of the Marriage and Marriage-Portion. *Co. Litt. 36.*

There must be an immediate Estate after the Husband's Death; it must be made for Term of the Wife's own Life; be to her and none other for her; and it must be made in Satisfaction of her whole Dower. 27 H. 8. For if an Estate be granted to a Wife for the Life or Lives of any others; be made to others in Fee-simple or for Life upon Trust, so as the Estate remains in them; these are no Bars of Dower, although made expressly in Satisfaction of it.

If a Jointure be made to a Wife, of Lands before Coverture, and after the Husband and Wife make a Conveyance of those Lands by Fine, she shall not be entitled to Dower in any other Part of her Husband's Estate; but if the Jointure had been made after Marriage, it will be otherwise: For in this Case her Estate is originally waiveable, as it is created after Marriage, and the Time of her Election comes not till the Decease of her Husband; so that she may claim her Dower in the Residue of the Land, as she might have done in the Whole, if she had not join'd in the Fine and Alienation. *Co. Litt. 36.*

From this it is very evident, that for a Wife to join with her Husband in levying a Fine of her Jointure, is very prejudicial; and she ought to take particular Precaution, lest she thereby lose her whole Thirds, which will most certainly be the Case, if the Jointure be well settled before Marriage. *Dyer fo. 359.*

But the Law is very careful and tender of Maintenance for the Wife, for without her Consent she cannot be disturb'd in the Enjoyment of her Right. And if a Man marries a Woman, and before Consummation gives her Bond and Judgment to leave her

her worth 1000 l. in Consideration of a Marriage-Portion; she shall be entitled to her Provision out of the Estate of her Husband, although he be never so deeply engag'd in Debts on Bond, Book Debts, &c. and some Authors say, That Judgments shall not take Place, without her signing some Writing declaring her Consent. But this I take to be a little hard upon Creditors, especially where it is conceal'd from the World.

If the Husband alien the Lands of the Wife, she can have no Remedy as long as he is living, but after his Decease she may recover by a *Cui in Vita*; and upon Default of the Husband in his Life-time, she may defend her Right, so as not to be driven to a real Action on his Death. *Co. Inst. 2 Part, fo. 343.*

After Jointures and Settlements of Estates, I am of Opinion a concise Illustration of the most common and effectual Conveyances of Lands, with some material Law-Cases relating to them, will be candidly receiv'd; as next to Descents, they shew the several ways how Property is obtain'd, and the Instruments or Conveyances I shall take Notice of are the following; Deeds of Gift, Bargains and Sales, Lease and Release, Fines and Recoveries, Exchanges, Assignments, Mortgages, Wills, &c.

A *Deed of Gift* is an Instrument wherein the Word *Dedi* is us'd; which is applied to two sorts of Conveyances, one where Lands are given to another in Consideration of natural Love and Affection, &c. and the other is a Deed made for passing of Goods, &c.

And a Gift may be either by Deed, or in Law; as where a Marriage is celebrated between a Man and a Woman, by the Marriage the Law gives all the Goods of the Wife to the Husband; and it is the same of an Executor, the taking of the Exe-

cutorship gives a Man Title to the Testator's Goods, but subject to the Payment of his Debts, *6c. Co. Litt. 351.*

*A Bargain and Sale* is an Instrument which transfers the Property of Lands or other Things for Valuable Consideration from one Man to another; and where any Freehold is to pass of Land, it must be inrolled within six Months, according to the Direction of 27 H. 8. c. 16.

There must be a good Consideration given, or at least said to be given in the Deed; and if the Bargain and Sale make mention of Money paid, when in Truth there is no such Thing, yet it shall be good, for no Averment can lie against what is expressly affirm'd in the Conveyance. *Dyer 90.*

No Contract, or Bargain and Sale of Goods, for above 10 l. Value is good in Law, except it be reduc'd to Writing and sign'd, or some Earnest given. 29 Car. 2.

*The Conveyance by Lease and Release* is thus: First, a Lease for a Year or Bargain and Sale is made, to give Possession of the Lands intended to be released, by Force of the Statute 27 H. 8. for transferring Uses into Possession; and then the Release is drawn, which is a Conveyance of all a Man's Interest, Right and Title to Lands, to another and his Heirs for ever. There is another sort of Release which is defined to be a discharging of a Right or Action, which a Man hath against another.

Formerly before the Statute 27 H. 8. a Feoffment was esteem'd not only the most ancient, but the most excellent kind of Conveyance; but as by this Conveyance Livery of Seisin, and Possession of the Estate granted is requir'd, and by Lease and Release it is not, the Deed of Release is more commonly used at this Time. And Lands may be given  
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and passed by way of Release, Rights and Titles to Lands or Goods, &c. but the Person as makes it must have such an Estate in himself, as out of the same may be derived and granted the Estate to the Releasee intended by the Release. *Co. Litt.*

In Case of a Release of a bare Right, the Person to whom this Conveyance is made, must have an Estate of Freehold, either in Deed or in Law, in Possession; or some Estate in Remainder or Reversion. *Co. Litt. 267.*

A Release of all Demands, is so very extensive, that by it all Rights and Titles to Lands Conditions annexed to Estates, &c. are released: Also all Statutes, Obligations, Contracts, Covenants, Rents, Actions real and personal, Debts, Executions, &c. are discharg'd. *Co. Litt. 291.*

There being many Frauds in Conveyancing, it may not be amiss to take some Notice of them and Forgery in this Place: All Conveyances, Grants, &c. made of Lands or Tenements to defraud any Purchaser of the same for Valuable Consideration, as against such Purchaser only, and every other Person lawfully claiming under him, shall be void; and Parties justifying the same to forfeit one Year's Value of the Land, and suffer six Months Imprisonment. *Stat. 27 Eliz. c. 4.*

Persons forging any Deed or Writing relating to Lands of Inheritance, or Freehold, shall pay double Costs and Damages to the Party grieved, be set on the Pillory, have their Ears cut off, Nostrils slit, and suffer perpetual Imprisonment. And for such Forgery of a Lease for Years, Bond, Bill, Release, &c. to pay double Costs, be set on the Pillory, lose one Ear, and be Imprisoned twelve Months. *Stat. 5 Eliz. c. 14.*

A *Fine* is a Conveyance upon Record; or a Final Agreement for settling and securing of  
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Lands and Tenements, acknowledged in the King's Court, &c. and a *Recovery* is a formal Act by Consent, used for the cutting off an Estate-Tail, &c. in Lands or Tenements, to the Intent the Person suffering it, may sell, give, or dispose of the same at his Pleasure; or a Record of Lands conveyed by way of better Assurance, which bars the Issue in Tail, and all that are in Reversion or Remainder. *West. Part 2. Symb. Sect. 1.*

Fines may be levied of all Things being *in esse tempore Finis*, and certainly express'd in the Writs; but they may not be levied of Things uncertain. 28 E. 4. c. 22. 32 H. 8. c. 36. But a Fine only bars Entails, and not Reversions or Remainders, as does a Recovery.

Privies in Blood, such as the Cognizor's Heirs, who make their Claim by the same Title as their Ancestor who pass'd the Fine, are barr'd presently thereby; but those as are neither Parties nor Privies, who are by the Law call'd Strangers to Fines, have five Years Time allow'd them after Proclamation, to make an Entry and lay Claim to their Right. *Br. Fines, 109. 4 H. 7. c. 24.* Formerly Fines were sent to the Justices of Assize to be proclaim'd in the County where the Lands lay, but now it is done in the Common Pleas only.

And five Years are allowed after a Remainder falls, after Forfeiture of Tenant for Life, for a Child in the Womb, after his Age of twenty-one, &c. to make Claim to an Estate: But a Fine must be of Lands in Possession, or the five Years will be no Bar; and an Action must be brought within one Year after Entry. *Star. 4 & 5 Anna.*

Tenant in Tail after Possibility of Issue extinct, Tenants by the Curtesy, or for Life, suffering a Recovery by Fraud, without the Assent, and to the Prejudice of him in Remainder or Reversion, such

such Recoveries are not only void, but are Forfeitures of the Estates of such Tenants for Life. *Shep. Touch. p. 43, &c.*

A Feme covert is to be examined in private, when she passes a Fine or suffers a Common Recovery, that her Consent may be the better discovered, without which a Fine cannot be levied. 18 E. 1.

An Exchange is, where two Persons make a mutual Grant of equal Interest, either of Lands in Fee-simple, Fee-tail, for Life, or Years, the one in Exchange for the other. And though an Exchange must be of equal Interest, yet it is not material whether either of the Parties come to the Thing given in Exchange by the same means and manner of Assurance. *Perk. Sect. 229, 263.*

In every Exchange there is implied a Condition of Re-entry; and if an Exchange be made of four Acres of Land, by one Person to another, of the like Quantity of Ground, and afterwards one of the Parties is ejected of one Acre by a Stranger, he may make an Entry upon the whole four Acres he had given in Exchange, and make void the Effect of the Deed. 4 Co. 121.

An Assignment is the transferring or setting over a Right that a Man has in any Thing to another.

If a Lessee for Years assign over his Term, the Lessor has a Privilege of charging which of the Parties he thinks fit; but if he once accept the Rent from the Assignee, knowing of the Assignment, his Election determines, and he may not afterwards bring an Action against the Lessee. *Ca. 3 Rep. fo. 24.*

A Mortgage by the Common Law, signifies a Pawn of Lands or Tenements, or any Thing moveable, for Money borrow'd, to be the Creditor's for ever, if not redeem'd by Re-payment of the Money.

In Mortgages there is inserted a Condition, That if the Money be paid at the Day, the Deed is to be void: And until Failure, the Mortgagor is to enjoy the Lands; and although Failure be made, whereby the Mortgagee enters, yet the Mortgagor has an Equity of Redemption; but the Mortgagee may call the Mortgagor to Account in Chancery, and foreclose the Equity of Redemption on Non-payment.

If any Person who hath once mortgaged Lands for Security of Money, shall again mortgage the same Lands, or any Part thereof to any other Person (the former Mortgage being in Force) and do not discover to the second Mortgagee, the prior Mortgage, such Mortgagor shall have no Relief or Equity of Redemption; but the second or other Mortgagees may redeem the former Mortgage. Stat. 4 & 5 W. & M. c. 16.

*A Will* is the Declaration of a Man's Mind and Intent in writing, of what he would have done after his Decease: And this Conveyance was ordain'd by Stat. 32 H. 8.

And by the Common Law that is call'd a Will, which devises Lands or Tenements; and when it concerns only Chattels, it is denominated a Testament. *Co. Litt. III.*

No Will has force till after the Testator's Death; but then without any further Grant, Livery, &c. it gives and transfers Estates, and alters the Property of Lands and Goods, as effectually as any Deed executed in a Man's Life-time; and hereby Discents may be prevented, Estates in Fee-simple, Fee-tail, for Life or Years, &c. may be made: But a Devise must be of a Thing and to a Person certain. And it has been held, If a Man by Letter express his Will for the Disposal of Lands, it is sufficient.

sufficient. *Litt. Sect.* 167, 168. *Co.* 6. 68. *Mich.* 24 *Eliz.*

By the Statute 29 *Car.* 2. all Devises of Lands or Tenements are to be in Writing, signed by the Devisor, in the Presence of three credible Witnesses at least; and no Devise in Writing is revocable, but by some other Will or Writing, or by Cancelling, &c. And where Goods or Chattels, personal Estate, &c. are given by nuncupative Will, which is, when the Testator declares his Will by Word without writing, if the Chattels bequeath'd exceed the Value of 30 *l.* such Devise is not good in Law, unless the same be made in the Presence of three Witnesses, bid to bear Witness by the Testator in his last Sickness, &c. *Stat. ibid.*

By the Civil Law a Youth of fourteen Years of Age, and a Female of twelve, may make a Will of Goods and Chattels, but not of Lands till the full Age of twenty-one. Though some of our Law-Books do not agree with this Opinion, but affirm that no Disposition may be made by Will of Goods or Chattels by an Infant under eighteen Years of Age the Male, and fourteen the Female, which seems to be the best grounded, as the Ages first mentioned can hardly be said Ages of Discretion for the making an absolute Gift or Disposal, even of Chattels.

By all Wills an Executor is appointed, for the Disposition of the Goods and Chattels of the Deceas'd; And his Business is, First, To bury the Deceas'd with Decency according to his Rank and Quality, and after that make an Inventory of the Goods, Chattels, Debts, &c. in the Presence of two Legatees, or other sufficient Persons; then his next Business is to prove the Will, sell the Goods and Chattels, and receive Debts; this being done, that he is enabled to satisfy all Persons claiming any Thing



Thing from the Estate of the Deceas'd, he is to pay all Debts before any Legacies; (and herein he may prefer his own Debt of the same Degree of those due to others) first, Debts to the King, Debts on Record by Judgment, Statutes, &c. Debts by Obligations, Specialties, &c. Rents of Leases, Servants Wages, Debts on Shop-Books, &c. And if the Executor pay any of the latter before the former, the Law is so nice, and so strict, that he will be liable to the whole, and must make it good out of his own Estate for want of Effects of the Testator. *Plow.* 543. *Dyer* 80, 232. *Keilw.* 64, 74. 21 *Ed.* 1. 33 *H.* 8. c. 39, &c. Executors may bring Writs of Account, and have like Action and Process as the Testator should have had, if he had liv'd. *Stat.* 13 *Ed.* 1.

An Administrator is one that hath the Goods and Chattels of a Person dying Intestate, committed to his Charge by the Ordinary, for want of an Executor: And Administration is to be granted to the Intestate's Widow, or next of Kin, who are to make Distribution of the Estate remaining after Debts and Funeral Expences are discharg'd; but this they are not by the Law oblig'd to 'till one Year after the Intestate's Death. And where a Man dies Intestate, leaving behind him no Issue, his Widow is entitled to a Moiety of his Goods, and the other Moiety is to be divided amongst the nearest Relations to the Deceas'd; but if there be Children left, then the Wife is to have a third Part only, and the Residue is to be equally divided amongst the Children: And if after the Father's Decease any of the Children happen to die without Will, in the Life time of the Mother, leaving neither Wife nor Children, every Brother and Sister, or their Representatives, shall receive an equal Share with her. But no Representatives shall

shall be admitted after Brothers and Sisters Children. 21 H. 8. cap. 5. 22 & 23 Car. 2. cap. 10.

It is a very good Method in the making of Wills, to have two Parts of them ingross'd on Skins of Parchment, and not on many Sheets of Paper; One whereof to be deposited in the Hands of some trusty Friend: and the Casualties of Life are so very great, that I take it very little Precaution is necessary to be urg'd for Persons of all Sorts, who have any Estate either in Lands or Goods to dispose of after their Deaths, to settle the same in a Time of Health and perfect Understanding.

The aforementioned are the most common and significant Deeds and Instruments for Conveying of Lands and Tenements, Goods and Chattels, &c. I now proceed to such Crimes, the committing whereof work a Forfeiture, as well of Lands and Tenements, as Goods, &c. and the several other concurring, and indeed principal Punishments, justly inflicted by the Laws of the Land, for the Support of Government, and the Welfare of Mankind.

Under this Head *Treason* is an Offence of the highest Nature, as it affects the Persons and Fortunes of Princes; and *Treason* is divided into two Parts, viz. *Alta Proditio*, & *parva Proditio*, High and Petit *Treason*. Co. Inst. 3 part, 4.

High *Treason* relates to the compassing or imagining the Death of the King, Queen, or Prince, and declaring the same by some Overt Act; the Violation and carnal Knowledge of the Queen, the King's eldest Daughter unmarried, the Prince's Wife; levying War against the King, adhering to his Enemies; Counterfeiting the Great Seal, Privy Seal, or the King's Commission, &c. 25 Ed. 3. And Petit *Treason* is where a Servant killeth his Master,

Master, a Wife her Husband, and an Ecclesiastical Person his Ordinary.

But High Treason being what I shall briefly take Notice of in this Place, I begin with Treasons against the King's Person, &c. And if a Man declare by any Overt Act Intentions of deposing the King, it is a sufficient Proof of his compassing and imagining the Death of the King; and so it is to Imprison the King, &c. *Co. Inst. 3 part, 6.* And by Statute 13 Car. 2. intending Death or Destruction, or any Bodily Harm which tends to it; to maim, wound, or restrain the King's Person, &c. on Attainder, the Criminals shall be adjudg'd Traitors.

If a Queen, Wife to a King Regnant, compass the Death of the King, and declare the same by some Overt Act, she is guilty of Treason; and if a Husband of a Queen Regnant compass her Death, and declare the same by some Overt Act, he is likewise guilty of Treason; for she is in many Respects a distinct Person by the Common Law. *Britton c. 8.*

At the Time as the famous Lawyer *Britton* wrote, to compass the Death of the King's Father or Uncle was High Treason, several Persons having been executed in former Times for those Crimes. And *Anno 3 R. 2.* it was declar'd by the Parliament, That the Killing *John Imperial*, Ambassador of *Genoa*, was High Treason. *Co. 4 part, 27.* And by the 28 H. 8. c. 18. it was made High Treason for any Person to marry, &c. with any of the Blood Royal within certain Degrees; but this is repeal'd.

To violate the Queen's Person was High Treason by the Common Law; but it is no Treason unless the Act be committed during the Marriage with the King, and extendeth not to a Queen Dowager.

And

And if the Wife of a King yields and consents to the Adultery, it is Treason in her. *Co. 3 part, 9.*

Levyng War against the King was likewise Treason by the Common Law; but a compassing or conspiring to levy War is no Treason, for there must be a levyng War *in Facto*: And yet the meeting and consulting to levy War, tho' no War be actually levied, will be a sufficient Overt Act to prove the compassing and imagining the Death of the King. *Bract. lib. 3. Brit. fol. 16, &c.*

Levyng War for any publick End or Purpose, as to remove Counsellors, alter Religion, work a Reformation, or against any Statute, &c. these incur the Penalties of High Treason. And this was the Case of several *London* Apprentices, who assembled to pull down Bawdy Houses; but they chose Leaders, marched in a Posture of War, wounded the Constable, and opposed the Guards. *Sid. 388.*

*David*, Prince of *Wales*, levied War against King *Edward* the 1st; this was adjudg'd Treason, for that he was within the Ligeance of the King, and he had Judgment given against him as a Traytor, and not as an Enemy. *Fleta lib. 1. cap. 16.*

Adhering to the King's Enemies, is giving Aid or Assistance to them either within the Realm or without; delivering up the King's Forts, &c. abroad, at home, for Reward, &c. But Subjects of the King, altho' they are in open War or Rebellion against him, yet they are not the King's Enemies, but Traitors: For Enemies are those which live out of the Allegiance of the King. *Co. Inst. 3 part, 11.*

All our Authors agree, That Counterfeiting the King's Seal was Treason in the earliest of Times; and taking the Great Seal from one Patent and fixing it to another, is so great an Abuse, that in many Instances



Instances it has been adjudg'd a Misprision of the highest Degree; and a Person having been guilty of an Act of this Nature, with relation to a Commission for levying Money, &c. had Judgment to be drawn and hang'd. 2 H. 4.

Not only Counterfeiting the King's Money is Treason, but Impairing, Lightening, &c. by Clipping, and otherwise, is made High Treason; but it shall work no Corruption of Blood. 18 Eliz. c. 1.

Treasons committed out of the Realm may be tried in the King's Bench by good and lawful Men of the same Shire where the Bench shall sit; or else before such Commissioners, and in such County, as shall be assign'd by the King's Commission, in like Manner as if such Treasons had been done within the same. 35 H. 8. c. 2. 5 Ed. 6. c. 11. But these Acts do not take away the Jurisdiction of the Constable and Marshal, where one accuseth another of High Treason committed out of the Realm, not triable by a Jury according to the Course of the Common Law, for want of Proof, &c. Co. Inst. 4 part, 124.

And by a late Statute, High Treason committed within the Realm may be tried in any County the King shall think fit. 1 Georg. This Act was made on the Rebellion.

Formerly when any Person was committed for Treason, no Friends were permitted to visit him, nor was he allow'd Pen, Ink, or Paper, or inform'd for what Treason he was committed, or by whom accus'd; but now by a late Statute, Persons indicted for Treason, whereby Corruption of Blood may be made, shall have a Copy of the Indictment, may advise with Counsel, make a full Defence by Witnesses on Oath; and shall not be tried or attainted but by the Oaths of two lawful Witnesses, to the same Overt Act, and to be produc'd Face to Face. 7 W. 3. c. 3.

In

In case of High Treason if a Criminal stand mute, yet Judgment shall be given against him, as if he had been tried and convicted, and his Estate confiscated. But if a Criminal indicted of Petty Treason or Felony refuse to answer, he shall suffer the Punishment of *Peine forte & dure*; that is, he is to be laid in a low dark Room upon the bare Ground, naked, on his Back, his Legs and Arms extended with Cords, and Weights or Stones put upon his Body, as much or more than he can bear, feeding him with three Morfels of Bread and Water a Day, 'till he expires. And this painful Death, which comes nearest the Breaking on the Wheel of any here in *England*, some stout-hearted Persons have in Times past chosen to save the Forfeiture of their Estates, which in these Cases are not liable to Confiscation without Trial and Conviction.

In High Treason. Lands in Fee-simple, Fee-tail, for Life or Years, and all Goods and Chartels at the Time of the Attainder, are forfeited. In Petit Treason, Lands in Fee, for a Year and a Day only, and in Tail, during the Life of the Offender. And the Sentence in High Treason is, That the Traytor shall be laid upon a Hurdle or Sledge, and be so drawn to the Place of Execution, there hang'd by the Neck, but be cut down alive, his Privy Members cut off, and Entrails suddenly pull'd out of his Body, and burnt; then his Head to be severed from his Body, and his Carcass divided into four Parts or Quarters, which are to be fix'd on Poles, where the King thinks fit, as a Terror to others. The Punishment for a Woman convicted of High Treason, or Petit Treason is, to be drawn and burnt alive. But where a Peer commits Treason, the King remits all but Beheading.

Next to Treason, *Felony* includes the most capital Crimes; and Felonies are either by the Com-

mon

mon or Statute Law. The Felonies by Common Law are against the Life of a Man, as Murder, Manslaughter, &c. Against the Goods, as Larceny, Robbery, &c. Against the Habitation, by Burglary, Burning, &c. And against publick Justice, as Breach of Prison.

In former Times a pecuniary Punishment was inflicted for Killing of a Person, according to the Quality of the Deceas'd; but I take it, this only extended to Manslaughter, and not Murder: In all Cases Malice makes the Murder, and no Words, no Gestures, tho' never so reproachful, are a sufficient Provocation to extenuate the Crime; neither is it of any Signification who begins the Quarrel, or gives the first Stroke; and if a Person die in a Year and a Day after the Wound given, it is Murder; but if angry Words pass between two Persons, and one of them pulls the other by the Nose, and the Person assaulted kills him immediately, it is only Manslaughter, it being a sudden Quarrel. 9 Rep. 67. 3 Cro. 779.

Murder may be committed divers Ways, as by Bruising, Starving, Strangling, Poisoning, Shooting, Stabbing, &c. And by Stat. 1 Jac. c. 8. if any Person shall stab another that hath not then any Weapon drawn, or that hath not first struck the Party stabbing him, if the Person die within six Months, it is Murder; but this Act does not extend to Persons killing others *se Defendendo*, &c.

And the King cannot pardon Murder, where any Person may have Benefit of an Appeal; and if a Criminal be acquitted he shall be bail'd for a Year and a Day for the Persons having Right, as the Wife, or Heir, &c. to prosecute their Appeal. Co. Inst. 3 part, 237, &c. When any Murder is committed the Coroner is to sit on the Body, inquire

quire: by a Jury of the Occasion of the Death, Persons present, &c.

Those who on Purpose, and of Malice, cut out or disable the Tongue, put out an Eye, slit the Nose, or cut off a Nose or Lip, or cut off or disable any Limb or Member of others, with Intention to maim or disfigure them, are guilty of Felony. 23 & 23 Car. 2. cap. 1. And cutting off a Man's Privy Members was formerly (before the Stat. 22 Car. 2.) Felony, but has been since adjudg'd Maihem only; in a Case where a Person was caught in Bed with another Man's Wife. 3 part Co. Inst. 63.

Unlawfully attempting to kill, assaulting, striking, or wounding a Privy Counsellor when in the Execution of his Office, is Felony by Stat. 9. Ann. c. 16. This Statute was made on Count Guiscard's stabbing the Earl of Oxford. And this was Felony by the Common Law.

Felony against the Goods of a Person, is what we call Larceny; and is call'd Grand Larceny, where the Things stolen exceed the Value of 12 d. for which the Offender shall be hang'd; and when it is under that Value it is call'd Petit Larceny, punishable only by Whipping, &c. Co. Inst. 3 part, 109.

If a Shopkeeper deliver Goods to a Person pretending to buy them, and he runs away with them, it is Felony; if a Carrier converteth Goods to his own Use, &c. which are committed to his Charge for Conveyance to another Person, it is Felony: And stealing Goods which a Man by Agreement is to use, or shall be left in his Lodging, is made Felony by Stat. 4 W. & M.

Stealing Goods out of any House, Outhouse, &c. to the Value of 5 s. tho' the same be not broke open; or assisting any Person therein either by



Night or Day, is made Felony, Stat. 10 & 11 W. 3. And if any Servant purloins, embezils, or makes away with his Master's Goods, &c. to the Value of 40 s. it is Felony without Clergy; but this does not extend to Apprentices under fifteen Years of Age. 12 Ann. c. 7.

Robbery is a violent and felonious taking away of Money or Goods from the Person of another, thereby putting him in Fear; and the Value in this Case is not material, for if it be but of the Value of 1 d. it is Robbery; but there must be something taken; for an Assault to rob only, without taking Money or Goods, is not Felony. 3 Co. Inst. p. 68, 69.

If a Person being pursu'd by a Robber happens to drop his Hat or his Purse, and the Thief takes it up, it is Robbery: And commanding a Person to deliver Money, &c. and he doth it accordingly, this is a Taking and Robbery, even altho' the Receiver should return the same to the Owner. 3 Co. Inst. Ibid.

If a Robbery be committed on the Highway in the Day-time, of any Day except Sunday, the Hundred is liable to make it good to the Person robb'd, by Action; but to entitle him to the Benefit, he is to give Notice with all Speed to the next Village, or some Person inhabiting near, be examin'd on Oath before a Justice of Peace, (who is to cause Hue and Cry to be made, &c.) and to commence his Suit within a Year, &c. But the Hundred is not chargeable where any one of the Malefactors is apprehended, that publick Justice may be done. 2 Cro. 106. 17 Eliz. c. 13.

Persons apprehending a Highwayman, and prosecuting him to Conviction, shall receive 40 l. Reward, of the Sheriff of the County, and be entitled to the Horse, Furniture, Money, &c. of the Offender:

Offender : And if any Person out of Prison, having committed a Robbery, shall impeach and discover two other Criminals, so as they are convicted, the Discoverer shall be pardon'd. 4 & 5 W. & M. The same Reward is allow'd in Cases of Burglary and Housebreaking, and Persons guilty of the Burglary discovering two others, are entitled to the Reward as well as a Pardon. 5 Ann. c. 31.

*Burglary* is where a Man shall in the Night-time feloniously enter into the House of another with an Intent to commit Felony, as to steal some Thing, kill some Man, &c. And if the Intentions are not put in Practice, it is Burglary.

If a Person enter a House when the Doors are open, this may amount to a Breaking in Law, but it is no Burglary unless the Door, Window, &c. be broken ; or the Door unlock'd, or Latch drawn. And entering in the Day-time, and lying privately 'till Night, and then committing a Robbery, is no Burglary ; but if the Offender break open a Door, &c. to secure his Escape and Retreat from the House, it will be Burglary. Co. Inst. 3 part, 44. Popb. 52, &c.

A Man may defend his House, and justify the killing another attempting to murder, rob, or commit Burglary ; and if he be indicted for the Death of a Person in such a Case, and the same be found by Verdict, he shall be acquitted. Stat. 24 H. 8. c. 5. And the late Statute which makes Rioting Felony, where twelve Persons are assembled, and they do not disperse in an Hour after Proclamation, enacts, That pulling down any Dwelling-House, or Outhouse, Church or Chapel, shall be Felony without Benefit of Clergy. 1 Georg. cap. 6.

Burning the House of another maliciously or voluntarily, is Felony at Common Law: And it is not necessary that the whole House be burnt; for if it be set on Fire, and but Part only is consumed, it is nevertheless Felony. *Co. Inst.* 3 part, 66. By Statute 22 & 23 *Car. 2. c. 7.* it is made Felony to burn any Barn, Rick, or Stack of Corn, &c. And by a late Act, Persons maliciously setting on Fire or Burning any Wood, Underwood, or Coppices, is Felony. 1 *Georg.* c. 48.

Servants thro' Negligence setting on Fire any Dwelling-house or Out-house, forfeit 100 *l.* to be distributed amongst the Sufferers by the Fire, &c. or to be imprison'd Eighteen Months. *Stat. 6 Ann.* c. 31.

In respect to Felonies against Publick Justice, if a Prisoner by Force break Prison, it is Felony; but if he go out, the Doors being open, it is not Felony; neither is it so to break a Prison set on Fire, for Safety. If a Gaoler permit a Felon, lawfully committed for Felony, to escape, it is Felony; and he may justify the Killing of an unruly Prisoner; but if he die by any hard Usage, not being refractory, it is Murder. *Co. Inst.* 3 part, 589, &c.

Besides these Felonies against the Life of a Person, his Goods, Habitation, Publick Justice, &c. there are other Felonies by Statute, which affect the Person, as Buggery, Rape, Polygamy, &c.

Buggery with Man or Beast, is Felony without Clergy; and it extends to Women as well as Men, the Words of the Act being, if any Person commit the Crime; and in *Coke's Institutes* we read of a Lady of great Quality, who was guilty of this Sin in a very notorious Instance, she having taken great Liberty with a Baboon, who did his Business

so effectually that her Ladyship conceiv'd by it.  
25 H. 8. § Eliz. c. 17. Co. Inst. 3 part. 59.

There must be *penetratio & emissio seminis* to make the Crime; but in my Lord Audley's Case, who was tried by his Peers for assisting in the Rape of his Lady, and Buggery his Servant; Hide, Chief Justice, declar'd the Offence of my Lord, Buggery, without Penetration; the Fact being Sodomitically using a Man upon his Belly.

The Crime of Buggery is so detestable, that the Words of the Indictment are, *Contra ordinationem Creatoris & naturæ ordinem, rem habuit veneream, dictumque puerum carnaliter cognovit, &c.*

Rape is when a Man hath carnal Knowledge of a Woman by Force, and against her Will. Co. Lit. 123. And tho' she consent after the Fact, it is still a Rape; and if she does not prosecute, her Husband; or if she has none, her Father, or next of Kin, may bring an Appeal.

If a Female, under the Age of Ten Years, be deflowered either with or against her Consent, it is Felony without Benefit of Clergy; by Statute 18 Eliz. c. 6. But Penetration of the Body must be prov'd, which is very difficult at so youthful an Age. Some of our Law-Books tell us, That if a Woman conceives it is no Rape, for that the Law presumes a Conception cannot be without her Consent.

As Rape is Felony, so it is Felony for a Man to take away a Woman by Force, either Maid, Wife, or Widow, that hath Substance in Lands or Goods, or is Heir Apparent; and to marry or defile her.  
3 H. 7. c. 2.

*Polygamy* is where any Person being married, doth at any Time after marry any other Person, the first Husband or Wife being then living, which is likewise Felony. But if either the Husband or



Wife be absent beyond the Seas, or in any Parts within his Majesty's Dominions for the Space of Seven Years, without giving Notice of his or hers being alive, the Marrying again in such a Case will be no Felony. *1 Jac. c. 11:*

Other Felonies by Statute are, Casting away Ships, Counterfeiting Exchequer-Bills, &c. And Persons getting Money or Goods deceitfully by Counterfeit Letters, &c. may be fin'd and imprison'd, and otherwise punish'd by Pillory, &c.

In all Cases of Felony, the Offender is to be hang'd by the Neck 'till he be dead; and as the Body is at the Disposal of the King, if the Crime be very enormous, as a barbarous Murder and Robbery, the Criminal is usually hang'd in Chains; otherwise he is decently buried by his Friends and Relations, if he has any: And the Forfeiture in Felony, is Lands in Fee-simple for a Year and a Day, and the Profits during the Life of the Offender; and also Goods and Chattels from the Time of the Conviction. In Manslaughter, Petit Larceny, &c. Goods and Chattels only are forfeited.

Now I have concisely treated of Offences, which occasion Forfeitures both of Lands and Goods; I come to the several Courts of Judicature, for Trial of Criminals, and deciding all Matters of Controversy relating to *Meum* and *Tuum*, &c. which finishes my Introduction.

But first I shall premise that there is an easier way of determining small Controversies, than by Proceedings at Law, *viz.* by Award; which is a final Judgment given by two Persons indifferently chosen by each Partry, or a third agreed upon by them, to whom the Matters in dispute are submitted; and their Determination is conclusive; but  
Chattels

Chattels real, or any Thing relating to a Freehold, are not arbitrable.

The Court of *Affize* and *Nisi Prius* (which I shall mention particularly after the Superior Courts) enquires of, and determines Treasons, Felonies, &c. and likewise tries all Manner of Actions, but subject to Removal or Appeal to the Courts at *Westminster*, viz. the King's Bench, Common Pleas, and Exchequer, especially the first mention'd.

The Court of *King's Bench* is so called from the Presence of the King, the Kings of this Realm having in Times past sat on the Bench, but the Judicature always belong'd to the Judges; it was formerly moveable with the Court; and it holds Plea of all Manner of Treasons, Felonies, and other Pleas of the Crown; has Power to correct Errors of all other Judges, reform Abuses, &c. And may hold Plea by Bill for Debt, Detinue, Covenant, and all other Personal Actions, *Ejectione Firme*, &c. against any that are in *Custodia Marescalli*, or any Officer, Minister, or Clerk of the Court, &c. This Court consists of the Lord Chief Justice of England, and three other Justices. *Co. Inst. 4 part, 71.*

The Court of *Common Pleas* does not follow the Court, but is held at a Place certain; and it challengeth the greatest Variety of Law-Suits; for herein all Actions relating to Assurances of Lands, and other real Actions by Original Writs are determinable, and also all Common Pleas mix'd or personal. The leading Process in this Court is a *Capias*; in *B. R.* a Bill of *Middlesex*, or *Latitat*; in Chancery *Subpoena*. This Court is govern'd by a Chief Justice, and three other Judges. And it has a *Custos Brevium*, three Prothonotaries, a Chirographer, fourteen Philazers, four Exigenters,

Clerk of the Warrants of the Juries, King's Silver, Effoins, Outlawries, and other Officers.

The *Exchequer* is an antient Court, and is of Original Jurisdiction without any Commission: This Court is a Court of Record, and consisteth as it were of two Parts, whereof one dealeth especially in the judicial Hearing and Determining of all Causes relating to the King's Treasure; and the other is term'd the Receipt of the Exchequer, properly employ'd in the receiving and paying of Money, of which I shall say more hereafter; and in another Branch of this Court, all Actions both real and personal are handled by Bill, &c. as a Court of Equity. A Lord Chief Baron, and three other Barons sit in this Court as Judges.

But the *Chancery* is one of our most antient and highest Courts of Judicature; the *British* and *Saxon* Kings having their Chancellors, and Court of Chancery; and this is the only Court out of which Original Writs did issue. It is next to the High Court of Parliament, and is a Court of Equity and Conscience, to do Right and Justice where the Common Law is severe or deficient in giving effectual Relief: And Causes are frequently hither remov'd by Appeal after Trial in Inferior Courts. If Parties descend to Issue, this Court cannot try it by Jury; but the Record is to be deliver'd to the King's Bench to be tried there, because for that Purpose both Courts are accounted but one, and after Trial it is to be remanded into the Chancery, and there Judgment to be given. The Lord Chancellor, or Lord Keeper, is sole Judge of this Court; but then he has under him the Master of the Rolls, twelve Masters in Chancery, and a very great Number of Officers, &c. *Co. Inst. 4 part, 78, 80, 82, 84, &c.*

Besides

Next to these Courts at *Westminster*, is the Assizes held twice a Year in every County of *England*, for the Ease of the People, in the Distribution of Justice. The twelve Judges are commissioned by the King to go in several Circuits for that Purpose: They judge of both Civil and Criminal Causes, for by a Commission of *Oyer and Terminer*, directed to the Judges, &c. they are empowered to try and determine Treasons, Murders, Felonies, &c. (before observ'd.) And Causes grown to an Issue in the Courts at *Westminster*, are determinable at the Assizes, &c. The Sheriffs, Under-Sheriffs, Bailiffs of Hundreds, Constables, Gaolers, &c. attend the Judges.

The Actions which are commenc'd in the Courts of King's Bench, Common Pleas, &c. are commonly divided into five sorts; under the Denomination of Actions personal, Actions real, Actions mix'd, Actions civil, and Actions penal. A Personal Action is that which one Man may have against another for Breach of Contract, or any other Offence done to a Man's Person. A real Action is where Lands, or Tenements, Rents, &c. of Freehold are claim'd. Mix'd Actions relate both to a Man's Person and any other Injury. Action Civil is for Recovery of a Sum of Money, or other Thing due to a Man. And Action penal aims at some Penalty in the Party sued, as on Breach of a Statute-Law, &c.

And Actions are further divided, into Actions of Debt, Actions upon the Case, of Slander, of Trespas, of Detinue, Waste &c. Action of Debt lies where any Sum of Money is due to a Man by reason of Accompt, Bargain, Contract, Obligation, or other Specialty: Action upon the Case lies for Deceits in any Contracts, Bargains, Sales, &c.

of



of any Wares, and for Breach of Promise, &c. Actions of Slander are for Words spoken which affect a Man's Life, Office, Trade, &c. tend to Loss of Preferment in Marriage, Service, &c. or Disinheritance. Trespass lies where any Person enters on Lands and does Damage, &c. or assaults and beats another. Detinue is for Recovery of Goods, &c. lent or delivered; and Waste is, where any Destruction is made, either in Houses, Woods, Lands, &c. by Tenant for Life or Years, to the Prejudice of the Heir or him in Reversion.

The Times limited for prosecuting these Actions, are as follow: All Actions of Debt, Trespass, Detinue, Actions of Accompt, upon the Case (except for Slander) are to be commenc'd within six Years after the Cause of Action, if the Plaintiff be of full Age, Discoverd, *Compos mentis*, &c. Actions of Trespass for Assault, Battery, &c. within four Years; and Actions upon the Case for scandalous Words within two Years. Stat. 21 Jac. 1. c. 16. And the Death of the King shall not discontinue any Suit or Action; nor of the Party where there are two or more, to abate it. 1 E. 6. c. 7 & 8. 9 W. 3.

The Law is so tender in respect to Actions, that no Man is to be imprison'd or condemn'd, without Trial by his Peers, *viz.* Persons of equal Degree with himself, and he is to be accused by two lawful Witnesses; and if any Person commit wilful Perjury, he shall forfeit 20 l. be set on the Pillory, suffer six Months Imprisonment, and be disabled to be an Evidence. And suborning a Witness to give Testimony in any Court of Record concerning any Lands, or Goods, &c. incurs a Penalty of 40 l. and six Months Imprisonment, &c. Stat. 5 Eliz. c. 9. But the Law, in my Opinion, in this Case, has not

not a proportion'd Severity to an Offence which so nearly concerns our Lives and Fortunes; and it would be very happy for many in the World, both in regard to their Possessions and Persons, if Perjury were made a Degree of Felony, at least, which, I take it, is but adequate to the Crime.

And all Trials at the Common and Statute Law, are to be tried by a Jury of twelve Men, each having 10 *l. per Annum*, Freehold, or worth 40 *l.* in Goods in Corporations; and the Party to be tried, may except against Persons return'd on the Jury, call'd Challenge; where a Juror is of Alliance to the Plaintiff, his Master, has any Right to the Thing demanded, &c. the Sheriff who makes the Return is of the Plaintiff's Kindred, &c.

Besides these Advantages to Persons in Trials, our Law has such a Regard to the Liberty and Ease of the Subject, that when-ever a Man is arrested for Debt, &c. or even when there is an Execution out against him, he may by *Habeas Corpus* remove himself from his close Confinement to the Fleet, or the King's Bench Prison; where he may enjoy the Liberty of the Rules, and in Term-time traverse the whole Town by a Licence easily purchas'd, for the accommodating his Affairs; and be at no Time in danger, unless his Itch for unbounded Liberty prompts him to exceed the Rules out of Term, without Authority; when indeed on Oath made before a Judge of his being abroad, he is liable to Arrest by an Escape-Warrant, and Commitment to the Common Gaol of the County where-ever taken, there to remain till he has satisfied his Debt. Stat. 1 *Annæ*, c. 6. For, *Frustra feruntur leges nisi obediuntibus.*

Thus

Thus I have gone through the several Particulars I intended in my Introduction; and I hope the Variety contain'd in the same, will render it entirely satisfactory to all my Readers, particularly the Gentleman of Estate; and I take Leave to observe, that it is a concise Introduction to our Common and Statute-Law, in the most useful Part, affecting Society in general, which will sufficiently apologize for its Length: I now proceed to the Body of my Book, beginning with the Laws and Statutes relating to the King, exclusive of the Crimes of Treason against the King's Person, which I have already treated of.

## CHAP.

## C H A P. I.

*The Laws and Statutes relating to the KING:*

*The Styles of our English Monarchs from the Conquest down; Acts of Settlement of the Crown, from the earliest of Times; Revenues of the Crown, Prerogative Royal, &c.*

**I**T is a Maxim in our Law, *Regem Angliæ nunquam mori*; for on the Demise of the King his Successor is immediately proclaim'd, and the Title, Dignity, and Royal Authority has thereby perpetual Continuance.

*William the Conqueror*, bore the Title of *Willielmus Rex Anglorum*; His Son *William Rufus*, assum'd the Style of *Willielmus Dei Gratia Rex Anglorum*. And *Henry the First*, did the same as *William Rufus*.

*Maud*, the sole Daughter and Heir of *Henry the First*, wrote *Matildis Imperatrix Henrici Regis filia & Anglorum Domina*, but King *Stephen* us'd the like Style as King *Henry the First*.

*Henry the Second*, omitted *Dei Gratia*, and made use of this Style, *Henricus Rex Angliæ, dux Normaniæ & Aquitaniæ, &c.* he having the Dutchy of *Aquitain*, and Earldom of *Poitiers*, in Right of *Elinor* his Wife, &c.

*Richard the First* bore the same Title as his Father *Henry the Second*, and made no Addition to it, though he was King of *Cyprus* and *Jerusalem*.

I

King



King *John* used the like Style, with the Addition of *Dominus Hibernia*, but all that he enjoy'd in Ireland was conquer'd by his Father King *Henry* the Second.

King *Henry* the Third, towards the latter part of his Reign wrote himself, *Rex Anglia, Dominus Hibernia, & Dux Aquitania*, leaving out *Dux Normanie*, &c.

King *Edward* the First, styled himself in like manner as King *Henry* the Third. And so did King *Edward* the Second all his Reign. And King *Edward* the Third bore the same Title until the 13th Year of his Reign, and then he styled himself, *Edwardus Dei Gratia, Rex Anglia & Francia, & Dominus Hibernia*, leaving out *Dux Aquitania*.

King *Richard* the Second, and King *Henry* the Fourth, used the same Style that King *Edward* the Third did. And King *Henry* the Fifth also made Use of it until the eighth Year of his Reign; and then he wrote himself, *Rex Anglia, Hares & Regens Francia, & Dominus Hibernia*.

King *Henry* the Sixth, wrote *Henricus Dei Gratia Rex Anglia & Francia & Dominus Hibernia*; this King being Crown'd at *Paris* King of *France*, he used the said Style thirty-nine Years, until he was dispossessed of the Crown by King *Edward* the Fourth, who after he had Reign'd about ten Years, King *Henry* the Sixth was restored to the Crown again.

*Edward* the Fourth, *Richard* the Third, and *Henry* the Seventh, likewise styled themselves, *Rex Anglia & Francia, & Dominus Hibernia*.

King *Henry* the Eighth used the same Style till the thirteenth Year of his Reign, he added *Fidei Defensor*. In the 22d Year of his Reign, at the end of his Style he added *Supremum caput Ecclesie Anglicanae*, and afterwards styled himself *Hen-*

*ricus Oſcarus Dei Gratia, Angliæ, Franciæ & Hi-  
berniæ Rex, Fidei Defenſor, &c.*

King *Edward* the Sixth uſed the ſame Style, and ſo did Queen *Mary* in the beginning of her Reign; and after her Marriage with King *Philip*, the Style was the longeſt that ever was, *viz.* *Philip* and *Mary*, by the Grace of God, King and Queen of *England*, and *France*, *Naples*, *Jeruſalem*, and *Ireland*, Defender of the Faith; Princes of *Spain* and *Sicily*, Archdukes of *Auſtria*, Dukes of *Milan*, *Burgundy* and *Brabant*, &c.

Queen *Elizabeth* ſtyled her ſelf Queen of *England*, *France* and *Ireland*, Defender of the Faith, &c. And King *James* the Firſt added *Scotland* to it, he being King of *Scotland* before his Acceſſion to the Crown of *England*.

King *Charles* the Firſt, *Charles* the Second, *James* the Second, and King *William*, bore the Style of King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, &c.

Queen *Anne* did the ſame till the ſixth Year of her Reign, and then on the Union of *England* with *Scotland*, ſhe took upon her the Style of Queen of *Great Britain*, *France* and *Ireland*. And his preſent Maſteſty King *George*, in his Grants and Patents, writes himſelf King of *Great Britain*, *France* and *Ireland*, Duke of *Brunſwick-Lunenburgh*, &c. on Account of his Hereditary Dominions in *Germany*.

According to Hiſtory, King *Henry* the Eighth was the firſt to whom Maſteſty was attributed, (he had likewiſe conſer'd on him *Chriſtianiffimus*, now belonging to the *French* King.) Before that Time our Kings were called Sovereign Lord, Highneſs, &c. And the Pope on King *Henry*'s ſuppreſſing of the Houſes of Religion, not only depos'd him of his Title, but of his Crown alſo, and gave his Kingdom to him that could catch it. But in the

35th Year of that Monarch's Reign, his Title was confirm'd by Parliament, which shews that the Styles of our *English* Monarchs from the Conquest down to this Time, which I have above illustrated, are not foreign to the Laws relating to the King, as the Legislative Power has sometimes interpos'd; and if it had not, its being a curious piece of History, would alone render it acceptable.

To this I shall add, that the Dignity of the King of *England* is Imperial; and our Kings have plac'd on their Heads an Imperial Crown, elevated with Diamonds. King *Edgar* wrote himself *Imperator & Dominus*; and King *Atbelstane* first reduc'd *England* to a Monarchy. The King's Motto, *Dieu & Mon Droit*, God and my Right, was first given by *Richard* the First, to intimate that the King of *England* holds his Empire of none but God. And the Motto upon the Garter, *Honi soit qui mal y pense*, i. e. *Shame be to him that evil thinketh of it*, was given by King *Edward* the Third, the Founder of the Order of Knights of the Garter.

No King of *England* us'd any Seal of Arms till the Reign of *Richard* the First; before that Time, the Seal was the King sitting in a Chair of State on one side of the Seal, and on Horseback on the other Side: But *Richard* the First seal'd with a Seal of two Lions, the Conqueror bearing that Arms; and King *John* was the first that bare three Lions, in Right of *Aquitain*; and King *Edward* the Third quartered the Arms of *France*, which has been continued down to this Time.

The State of the Kingdom of *England* is Monarchical, and from the Beginning has been successive by Right of Inheritance; but sometimes our Kings, for political Reasons have conferr'd their Principalities on whom they pleas'd, esteeming it lawful to appoint their Successors after them.

For

For *Edward* the Confessor appointed the Crown after his Decease, at several Times, to not only *William* the Conqueror, but *Edgar* and *Harold*; and *Harold* after the Decease of his Father, upon the Title left him, was crown'd by the Archbishop of *York*; but *William* of *Normandy* having slain *Harold* at the Battel of *Hastings*, he claim'd the Kingdom as well by the Nomination of *Edward* the Confessor, as by Right of Conquest, and he was crown'd, and enjoyed the Kingdom for his Time. *Ba. Coron. 4. 27.*

And to shew that the Parliament have likewise a Power and Right in these Cases, if we examine further down, we shall find, that the Crowns of *England* and *France* were entail'd on King *Henry* the Fourth and his four Sons, by Act of Parliament. See 7 *H. 4. c. 2.* The Parliament entail'd the Crown on *Henry* the Sixth, and his Issue, and *Richard* the Third was recogniz'd by Parliament. But the most extraordinary Instance of this Nature was, the Nomination and Appointment of King *Henry* the Eighth, to whom the Parliament granted Power by his last Will and Testament in Writing, and signed with his own Hand, to make Conditions and Limitations at his Pleasure, for settling the Inheritance of the Crown; and he by his Will ordain'd, That his Son *Edward* should succeed him, and he dying without Issue, his Daughter *Mary*, and for her Want of Issue, his Daughter *Elizabeth* to enjoy the Crown in Succession; with Remainders to such as the King by his Letters Patents, or last Will in Writing should appoint. *Stat. 35 H. 8. cap. 1.*

After the Death of King *Henry* the Eighth, his Son *Edward* the Sixth, a Prince of excellling Virtue, was by the Perswasions of the Duke of *Northumberland*, prevail'd with to appoint the Lady  
E *Jane,*



*Jane*, Daughter to the Duke of *Suffolk*, (who married King *Henry's* Sister) a Protestant Lady of great Piety, by his Letters Patent, to succeed him; and to set aside his two Sisters: But this Appointment soon after the lamented Death of King *Edward*, was vacated by Queen *Mary*; the Lady *Jane* beheaded, and the Protestant reform'd Religion eclipsed during her Reign; but it reviv'd again, and receiv'd Perfection, by her Successor the glorious Queen *Elizabeth*.

By the Stat. 1 *Eliz.* (which annex'd all Jurisdiction to the Crown) the Parliament acknowledg'd the Queen to be right Heir to the Crown, and promise to defend her and the Heirs of her Body in that Estate: And by this Act the Limitation of the Crown contain'd in 35 *H. 8.* is declared to stand and remain Law for ever; and all Clauses of Statutes, and other Things heretofore passed against the same, to be void.

And when King *James* the First came to the Crown, the Parliament made a Recognition, that upon Queen *Elizabeth's* Death, the Crown of *England*, and all the Kingdoms, Dominions, and Rights belonging to the same, did by lawful Birth-right and Succession descend to King *James*. Stat. 1 *Jac. 1. c. 1.*

After this I do not find that the Parliament intermeddled in Settling the Succession of the Crown, till the Abdication of King *James* the Second; (the Word *Abdicate*, according to the Lord Keeper *Somers*, in the Debates on that Subject, signifying an entire Renunciation and Relinquishing, so as to have nothing further to do with a Thing, or such Actions as are inconsistent with the holding of it; and not a meer Act of Desertion, as the Lords would have it in Opposition to the Commons, which is only a Temporary Quitting, and leaves the Party

- at

at Liberty of returning again) when the immediate danger of Popery made a Revolution absolutely necessary, and the Gentry and Nobility of the Kingdom, invited over the Prince of Orange to protect them in the Enjoyment of their Rights and Liberties.

And the Statute 1 *W. & M.* runs, That whereas the Lords Spiritual and Temporal, and Commons assembled at *Westminster*, lawfully, fully, and freely representing all the Estates of the People of this Realm, did upon the 13th Day of *February*, in the Year of our Lord 1688. present unto their Majesties, then called and known by the Name and Style of *William and Mary*, Prince and Princess of *Orange*, (the latter, eldest Daughter of King *James* the Second) a certain Declaration in Writing made by the said Lords and Commons, in Words following, *viz.*

“ **W** Hereas the late King *James* the Second,  
 “ by the Assistance of divers evil Coun-  
 “ sellors, Judges and Ministers employed by him,  
 “ did endeavour to subvert and extirpate the Pro-  
 “ testant Religion, and the Laws and Liberties of  
 “ this Kingdom; by assuming and exercising a  
 “ Power of dispensing with, and suspending of Laws,  
 “ and the Execution of Laws, without the Consent  
 “ of Parliament; by committing and prosecuting  
 “ divers worthy Prelates, for humbly petitioning  
 “ to be excus’d from concurring to the said as-  
 “ sum’d Power; By issuing and causing to be  
 “ executed, a Commission under the Great Seal,  
 “ for erecting a Court call’d. *The Court of Com-*  
 “ *missioners for Ecclesiastical Causes*; By levying  
 “ Money, for and to the Use of the Crown by Pre-  
 “ tence of Prerogative, for other Time, and in  
 “ other Manner, than the same was granted by  
 E 2 Parliament;

" Parliament; By raising and keeping a standing  
 " Army within this Kingdom in Time of Peace,  
 " without Consent of Parliament, and Quartering  
 " Soldiers contrary to Law; By causing several  
 " good Subjects, being Protestants, to be disarm'd,  
 " at the same Time when Papists were both arm'd  
 " and employ'd, contrary to Law; By violating  
 " the Freedom of Election of Members to serve in  
 " Parliament; By Prosecutions in the Court of  
 " King's Bench, for Matters and Causes cogni-  
 " zable only in Parliament; and by divers other  
 " arbitrary and illegal Courses.

" And whereas of late Years, partial, corrupt and  
 " unqualified Persons have been returned and serv'd  
 " on Juries in Trials, and particularly divers Jurors  
 " in Trials for High Treason, which were not Free-  
 " holders. And excessive Bail hath been requir'd  
 " of Persons committed in criminal Cases, to elude  
 " the Benefit of the Laws made for the Liberty of  
 " the Subjects. And excessive Fines have been im-  
 " posed. And illegal and cruel Punishments inflict'd,  
 " And several Grants and Promises made of Fines  
 " and Forfeitures before any Conviction or Judg-  
 " ment against the Persons upon whom the same  
 " were to be levied. All which are utterly and  
 " directly contrary to the known Laws, Statutes  
 " and Freedom of this Realm.

" And whereas the said late King *James* the Se-  
 " cond, having Abdicated the Government; and the  
 " Throne being thereby vacant; his Highness the  
 " Prince of *Orange*, caused Letters to be writ to  
 " the Lords Spiritual and Temporal being Prote-  
 " stants; and other Letters to the several Coun-  
 " ties, Cities, Boroughs, &c. for the Chusing  
 " such Persons to represent them in Parliament, in  
 " order to such Establishment, as that their Re-  
 " ligion,

## The Gentleman's Law.

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“ligion, Laws, and Liberties, might not again be:  
“in danger of being subverted.”

Upon this Elections were made, and the Lords and Commons being assembled, they confirm'd the afore-mention'd Declaration, and every Particular Article therein, adjudging the several Steps of the late King *James* the Second, illegal; and insisting upon their Rights and Liberties; at the same Time having an entire Confidence in the Prince of *Orange*, they resolved, That *William* and *Mary*, Prince and Princess of *Orange*, be, and be declared King and Queen of *England*, *France* and *Ireland*, for their Lives and the Life of the Survivor of them: And after their Deceases, the Crown and Royal Dignity to be to the Heirs of the Body of the said Princess; and for want of such Issue to the Princess *Anne* of *Denmark*, Sister to the Queen, and the Heirs of her Body, &c.

By 1 *W. & M. c. 6.* The Coronation Oath was regulated to be taken by the Kings of *England*.

### Coronation Oath.

THE Archbishop or Bishop shall say to the King, “Will you solemnly promise and  
“swear to govern the People of this Kingdom of  
“*England*, and the Dominions thereunto belonging, according to the Statutes in Parliament  
“agreed on, and the Laws and Customs of the  
“same? To which the King shall say, *I solemnly*  
“*promise so to do.* Then the Archbishop or Bishop  
“shall say; Will you to your Power cause Law  
“and Justice in Mercy, to be executed in all your  
“Judgments? To which the King shall answer,  
“*I will.* Then the Archbishop or Bishop shall  
“further say; Will you to the utmost of your  
“Power maintain the Laws of God, the true Pro-



“ session of the Gospel, and the Protestant Re-  
 “ form’d Religion established by Law; and will  
 “ you preserve to the Bishops and Clergy of this  
 “ Realm, and to the Churches committed to their  
 “ Charge, all such Rights and Privileges as by  
 “ Law do or shall appertain unto them, or any  
 “ of them? And the King shall say, *All this I pro-*  
 “ *mise to do.* After this the King laying his Hand  
 “ upon the Holy Gospels, shall say; *The Things*  
 “ *which I have here before promised, I will perform*  
 “ *and keep, So help me God.* And then shall kiss  
 “ the Book ”.

By Stat. 2 *W. & M. Sess.* 1. c. 1. the Lords and Commons recogniz’d their Majesties, and declared that of Right, and by the Laws of the Realm, they ought to be King and Queen of *England*, &c. And by 13 *W.* 3. c. 6. the Oath of Abjuration of the pretended Prince of *Wales* was enjoined to be taken by all Officers Civil and Military, &c.

In the 12th Year of the Reign of *William* the Third, the Princess *Sophia* (Daughter of *Elizabeth*, eldest Daughter to King *James* the First) was declared by the Parliament the next in Succession after his Majesty and the Princess *Anne* of *Denmark*, and their respective Issues, and that then the Crown, &c. shall remain to the Princess *Sophia*, and the Heirs of her Body being Protestants: But those who shall come to the Possession of the Crown, are to join in Communion with the Church of *England*; this Nation not to be obliged to War for Defence of Dominions not belonging to the Crown; that no Person born out of *England*, &c. except of *English* Parents, shall be of the Privy-Council, or Member of either House of Parliament, enjoy any Office or Place of Trust; That

no Pardon under the Great Seal be pleadable to an Impeachment by the Commons; and that the Persons who may inherit the Crown, are not to marry Papists; nor go out of the Dominions of Great Britain or Ireland, without the Consent of Parliament: But this last Limitation is since repealed.

Pursuant to these Acts of Settlement, on the Demise of her late Majesty without Issue, and the Princess Sophia being likewise dead, his present Majesty King George, eldest Son to the said Princess Sophia, by Ernest Augustus, Duke and Elector of Brunswick-Lunenburgh, came to the Possession of the Throne of his Ancestors.

I have nothing further to observe, than that by the 1. and 4 & 5 Anne, It was made High Treason to endeavour to deprive the next in Succession; and enacted, That if any Person shall maliciously, advisedly, or directly, by Writing or Printing, declare or affirm, That the King is not lawful King, or that the pretended Prince of Wales hath any Right to the Crown, or that any other Person hath a Right to it, otherwise than according to the Act of Settlement; or that the Kings and Queens of England are not able by the Authority of their Parliaments, to make Laws sufficient to limit and bind the Crown, they shall be guilty of High Treason; and Preaching, Teaching, or advisedly Speaking, &c. is made a *Præmunire*.

A *Præmunire* incurs the Forfeiture of Lands and Goods; the Offender to be put out of the King's Protection, and to be imprison'd during the King's Pleasure. 16 R. 2. c. 5.

In the Absence of any King of England, occasion'd by an Expedition abroad, or otherwise, it was usual formerly, to constitute a Vicegerent by Commission under the Great Seal, giving him se-

veral Titles and Powers according as the Necessity of Affairs required.

Sometimes he has been called Lord Keeper of the Kingdom, and had the general Power of a King, as was practised during the Absence of *Edward* the First, Second and Third, and *Henry* the Fifth.

In the Reign of King *William* the Third, his Royal Consort Queen *Mary*, had the Regal Power and Government in her Hands when the King attended the Wars in *Flanders*: And his Majesty King *George*, on his going to visit his Foreign Dominions at *Hanover*, constituted a Regency, at the Head of which was his Royal Highness the Prince of *Wales*, who was declared Guardian of the Kingdom.

King *Henry* the Second, took his Son into a kind of subordinate Regality with him, so that there was *Rex pater & Rex filius*. But King *Henry* did not divest himself of the Sovereignty, as some have thought, but reserved to himself the Homage and Allegiance of his Subjects, and of his Son also.

And this Communication of Sovereignty by the King, could not be done without Consent of Parliament; for as a King cannot wholly resign or dismiss himself of his Kingly-Office, without the Consent and Concurrence of his Parliament, so neither could King *Henry*, without such Consent, divide the Sovereignty.

There is a sacred Band between the King and his Kingdom, that cannot be dissolved without the free and mutual Consent of both in Parliament; and though in Foreign Kingdoms there have been Instances of voluntary Cessions and Resignations, which possibly may be warranted by their several Constitutions, yet by the Laws of *England*, the King

King cannot resign his Sovereignty without his Parliament.

And the Resignations that were made by *Edward* the Second, and *Richard* the Second, were extorted by Force, Violence and Oppression, to give Countenance to those Usurpations that succeeded them, and were Acts of high Disloyalty and Injustice. Sir *Matt. Hale's Hist. Corona, &c.*

Next to Acts for Settlement of the Crown, the Regency, &c. I proceed to Revenues of the Crown, and after this I shall treat of Estates made and granted by the Kings of *England*, their Privileges, Descent of the Crown, the Royal Prerogative, &c.

And to pursue my first Head, the Revenues of the Crown: To King *Henry* the Second, was given twelve Pence in the Pound, for the Maintenance of Religion: Fifteenths were granted to expel the *Jews*; and *Anno 4 R. 2.* a Tenth of the Clergy, &c. was likewise granted.

King *Edward* the Third, caused his Household to be certain in Allowance; and in the Reign of *Henry* the Fourth, when the Revenue and Profits of the Kingdom, together with the Subsidy of Wool, and Tenths of the Clergy, amounted to no more than 48,000 *l. per Ann.* for the Charge of the King's Household was appointed 16000 *l. per Annum.* In the 8th and 9th of *Henry* the Fourth, a Duty of Tonnage and Poundage began: And before this our Kings were so necessitated, that they pawned the Jewels of the Crown, and even the Crown it self.

In the third Year of the Reign of King *Henry* the Fifth, the Revenues of the Crown, consisting of the great and petty Customs, Tonnage and Poundage, the Revenue of *Wales*, and Dutchy of *Cornwal*, the *Hayaper*, Accompts of Sheriffs, &c. amounted to 56,966 *l.* what was appropriated for

Main-



Maintenance of the King's House I cannot find out; But in the 29th of *Henry* the Sixth, the Charge of the Household was reduc'd to 12,000*l.* And doubtless the Revenues of the Crown were considerably increas'd: But the Management and good OEconomy of this Prince did not equal that of King *Henry* the Seventh, who left in his Coffers at the Time of his Decease 5,300,000*l.* but mostly Foreign Coin, which was an immense Sum in those early Times of Money. This Prince has been esteem'd one of our richest *English* Monarchs, and *Henry* the Third, the poorest.

King *Henry* the Eighth in the fourteenth Year of his Reign exacted by way of Loan ten Pounds in the Hundred of all Lands, Jewels, &c. according to the utmost Values ascertain'd upon Oath: And in the Reign of Queen *Elizabeth* the Profits of the Kingdom, besides the Duchy of *Lancaster*, amounted to 1,88,197*l. per Annum.* And for the Household was allow'd 40,000*l.* the Privy-Purse 2000*l.*

In the Reigns of King *James* and *Charles* the First, little was done to increase the Revenue, besides the Imposition of Ship-Money, which by Statute was declar'd unlawful and void; being rais'd without the Consent of Parliament. But in the Reign of King *Charles* the Second, the great Duty of Tonnage and Poundage was granted on Wines, Merchandizes, &c. to his Majesty for Life, &c. And an Act was made for a free and voluntary Present to his Majesty; but it was thereby declar'd, That no Commission or Aid of this Nature can be issued or levied but by the Authority of Parliament, and that the Supply granted, should not be a Precedent for the future. 13 *Car. 2.*

A Duty on Beer, Ale, &c. was also granted by Parliament to King *Charles* the Second for Life; which with the Tonnage and Poundage, have been likewise granted and continu'd to the succeeding Kings of *England* during their Lives; and these Duties of Customs, Excise, &c. with the Profits arising from the Post-Office, &c. encreased the Revenue in the Reign of King *Charles* the Second, to about two Millions *per Annum*, exclusive of the voluntary Present, which was no inconsiderable Sum.

The Revenue being so much augmented on the Restoration, and the Parliament finding the Crown Charges exceedingly encreas'd, for the Honour of the King and Kingdom, they agreed to settle on his Majesty a Yearly Revenue of 1200,000*l.* and accordingly with the King's Consent, at the Humble Request of the Lords and Commons, there was establish'd by Imposts upon Goods imported and exported, on Liquors drank in *England*, &c. so much as was judg'd would bring up the former impair'd Crown Revenues to the said Sum.

In the Reigns of King *William*, and the late Queen *Anne*, the Revenues of the Crown amounted to above five Millions, by the Addition of the four Shillings in the Pound Land-Tax, the Malt-Tax, &c. which was a prodigious Augmentation, and they are still encreasing by New Duties, almost annually impos'd; which has brought them at this Time to exceed six Millions *per Annum*: But tho' the Revenues were so flourishing in the Reigns of King *William* and Queen *Anne*, yet the Nation has been so involv'd in Debt by almost continual Wars for thirty Years past, that to those Princes were allow'd only 700,000*l.* *per Annum*, for the ordinary Charge of the Government, or Civil List:

**List:** And his present Majesty King *George* has the same Sum since settled upon him by Parliament, in the same Manner as his Renowned Predecessors. Nor is the Prince of *Wales* neglected, he having 100,000 *l. per Annum* allowed for his Household.

This concise Account of the Revenues of the Kings of *England*, which I have taken from the best Authorities, is not unworthy of a Place in my Treatise; it containing mostly the Transactions of our *English* Parliaments, and shewing our Increase of Wealth and Power; and I shall conclude, That according to the Opinion of the famous Lawyer *Noy*, the King of *England* may support and increase his annual Revenues by the following Means, *viz.* by Parliament, or Advice of Council; by abating and reforming Excesses in his Household; improving the Revenues of the Crown, by Grant of the Subject; by Laws, Penalties, Customs, Merchandize, Shipping, Regalities, Liberties, Offices, Honour, Vacancy of Bishopricks, Charters, &c. *Noy's Rights of the Crown, p. 2, 3.*

I now come to Estates made and granted by our *British* Kings, their Privileges in Descents, &c. and Prerogative with Respect to Proceedings at Law, Debts, &c. And first by the Statute 1 *H. 4. c. 6.* to the intent that the King might not be deceiv'd in his Grants, it is declar'd, That his Majesty is willing (by the Assent of the Lords Spiritual and Temporal, and at the Request of the Commons) to be hereafter concluded by the wise Men of his Council in Things touching the Estate of him and his Realm.

The King's Grant is taken more strongly against a Stranger, and more favourable to the King, altho' the Thing granted come to the King by Purchase or Descent; but it is otherwise of a Common

Common Person, for in such Case every Man's Aſt is taken moſt ſtrongly againſt himſelf. By the Grant of a Manor by the King, the Advowſon ſhall not paſs without ſpecial Words: The King may grant a Thing in Action which another cannot. And if Part of an entire Thing cometh to the King, the Common Law ſhall give it him all; as if an Obligation be made to two, and one is outlaw'd, the King ſhall have all the Duty, &c. *Ployd. 243.*

If a Man hold a Manor of the King to which an Office is annex'd, and die, having Iſſue two Daughters, the eldeſt Daughter taketh Husband, he ſhall execute the Office ſolely, and before Marriage it ſhall be committed to ſome ſufficient Deputy. But the Dignity of the Crown of England is deſcendible to the eldeſt Daughter immediately, and her Poſterity, for want of Heirs Male, and ſo it has been declar'd by Aſt of Parliament; and agreeable to this is the Poet on the Deſcent of Troy,

*Præterea ſceptrum Ilione quod geſſerat olim*

*Maxima natarum Priami*—

Virgil i. *Æneid.*

By Statute 25 H. 8. c. 22. *Regnum non eſt diviſibile*; and half Blood is no Impediment to the Deſcent of Lands of the Crown; for after the Deceafe of King Edward the Sixth, Queen Mary, and after her Queen Elizabeth, both which were of the half Blood, inherited not only the antient Lands belonging to the Crown, but alſo thoſe which King Edward held by Purchase. *Co. Lit. 15, 165.*

But a Daughter of the whole Blood ſhall not inherit where there is a Son of the half Blood; for Example, If the King hath Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and purchaſeth Lands and dieth; afterwards the eldeſt Son enters and dies alſo, without Iſſue,



Issue, the Daughter shall not inherit these Lands, nor any other Fee-simple Lands of the Crown; but the younger Brother shall have them. *Pl. Com.* 245. 34 *H.* 6.

A Person coming to the Dignity of King by Descent of the Part of his Mother, makes a Purchase to him and his Heirs, and dies without Issue, this Land shall descend to the Heir on the Part of the Mother; but in case of a Subject, the Heir on the Father's Side shall enjoy them. King *Henry* the Eighth purchas'd a considerable Estate in Lands to him and his Heirs; and his two Daughters, the Lady *Mary*, and Lady *Elizabeth*, enjoy'd them in Succession, after the Death of King *Henry*, and King *Edward*, as I have already observ'd. The eldest Sister of a King, as well as the eldest Daughter, shall inherit all his Fee-simple Lands. And all the Lands and Possessions whereof the King is feis'd in *Jure Coronæ*, shall *secundum jure Coronæ*, attend upon and follow the Crown; so that to whomsoever the Crown descends, those Lands and Possessions descend also. And if the Right Heir of the Crown be attainted of Treason, yet shall the Crown descend to him, and *eo instante*, without any other Reversal, the Attainder is utterly avoided, which was the Case of King *Henry* the Seventh. *Pl. Com.* 247. *Co. Lit.* 15, 16.

If the King by his Letters Patents giveth Lands, or Tenements, to a Man and his Heirs Males, the Grant is void; for Sir *Edward Coke* in his *Commentaries* on *Littleton* tells us, in this Case there can be no such Inheritance of Lands as the King intended to grant; but the King as a Reward for Service done may grant Arms, &c. to a Man and his Heirs Male, and they shall descend accordingly.

And

And sometimes Estates are limited to Dignities as well as Persons, and the Descent shall be lawful : As the Dutchy of *Lancaster* was intailed to King *Edward* the Fourth, and his Heirs, Kings of *England*. And King *Henry* the Sixth did by his Letters Patents grant, *Johanni filio Johannis Talbot quod ipse & hæredes sui Domini Manerii de Kingston Lisse in Comitatu Berks ex nunc Domini & Barones de Lisse Nobiles & Procures regni babeantur, teneantur, & reputentur, &c.* And by this he had a Fee-simple qualified in the Dignity. *Co. Lit. 27.*

If a Man give Lands to the King by Deed in-roll'd, a Fee-simple doth pass without the Words, *Heirs* or *Successors*, because in Judgment of Law the King never dies; *Contra* of a Common Person, it will be only an Estate for Life. *Pl. Com. Lord Berkeley's Case.*

King *Henry* the Third gave a Manor to *Edmond* Earl of *Cornwall*, and the Heirs of his Body, saving the Possibility of Reverter, and died. The Earl before the Statute of *W. 2. c. 1. De donis Conditionalibus*, by Deed, gave the said Manor to another in Fee with Warranty, in Exchange for another Manor; and after the said Statute in the Twenty-eighth Year of *Edward* the First, died seised without Issue, leaving Assets in Fee-simple: Which Warranty and Assets descended upon King *Edward* the First, as Cousin Germain and Heir of the said Earl, *viz.* Son and Heir of King *Henry* the Third, Brother of *Richard* Earl of *Cornwall*, Father of the said *Edmond*. And it was adjudg'd, That the King as Heir to the said Earl *Edmond*, was by the said Warranty and Assets barred of the Possibility of the Reverter; but the King should not be barred without Assets, as a Subject should be. *Co. Lit. 370.*

If the King give Lands with Clause of an express Warranty, yet the Patentee, &c. shall not recover in Value against the King without special Words, that the King shall yield Lands in Value upon Eviction, &c. And nevertheless in that Case he shall have Aid of the King by the general Purview of the Law; and it is for the King's Honour to maintain the Estate he has granted: But if the King exchange Lands with another, he is bound to Warranty, and to yield in Value. *Hil. 6 Ed. 1. Brewse's Case.*

Leases made by the King under the Great Seal, or Seal of the Exchequer, of Parcel of the Dutchy of *Cornwall*, shall be good in Law, if such Leases are made for three Lives, or Thirty-one Years, or for some Term of Years determinable upon one, two, or three Lives; but they are not to be made dispunishable of Waste; and the antient Rent shall be reserv'd, or so much as hath been paid for the greatest Part of twenty Years before the making of such Leases: And where no Rent has been reserved, there shall be a Reservation not under the fourth Part of the clear Yearly Value. *13 Car. 2. cap. 4.*

The King may likewise make Leases under the Seals of the Dutchy of *Lancaster*, &c. to take Effect in Possession, or by way of future Interest for one, two, or three Lives, or some certain Term of Years, not exceeding three Lives, or fifty Years, from the Date of such Grant; and King *Charles* the Second was enabled by Parliament, under the Great Seal, or the Seal of the County Palatine of *Lancaster*, to grant Letters Patents of divers Fee-farm Rents, and other Rents due to the Crown, to such as would purchase, and Trustees were appointed for the Sale of them. *Stat. 22 Car. 2. cap. 6.*

The King makes a Lease to a Person of Lands for Years, reserving a Rent, and the Lessee is possess'd of a Term of Years in other Lands, if the King's Rent be behind, he may distrain on the whole Lands; and of whomsoever any Lands be holden in such a Case, the same is liable to Distress, being in the actual Possession of the King's Tenant. *Co. Inst. part 4. p. 119.* The King may likewise distrain on the Highway. *Co. 2. part, 132.*

When the Right of the King and the Subject concur, the King's Right shall be preferr'd. *Dame Hale's Case.* All the Lands and Tenements in *England* are holden either mediately or immediately of the King, and therefore he is called, Lord Paramount, & *summus dominus supra omnes*— And he is, by his Prerogative, *Ultimus Hares Regni*— where no Heir appears, that Families are extinct; for all Estates for want of Heirs, or by Forfeiture, revert or escheat to the King. And the King shall have the Custody of the Persons and Lands of Ideots, and Lunaticks, providing them Necessaries, and preserving the Estates for the next Heirs. *Co. Inst. 2 part, 501. Stat. 17 Ed. 2. c. 9.*

And there is no *Interregnum* in *England*, for if the Crown descend to the Right Heir, he is *Rex* before Coronation, as there must be always a King in whose Name Laws are to be maintain'd and executed; and the Coronation is only a Solemnity of Honour, next to taking of the usual Oath. *Hill. 1 Jac.* The Case of *Watson and Clerk.*

The King can do no Wrong, because he has committed all his Powers Judicial to divers Courts, some in one Court, and some in another; and all Matters of Judicature, and Proceedings in Law, are distributed to the Courts of Justice, and the



King doth judge by his Justices. And regularly no Man is to be attach'd by his Body, but by Process at Law. *Co. Inst. 2 part, 187.*

The King's Justices on their taking their Places, are to take an Oath to serve the King, warn him of Damage, do Justice, take no Bribe, give no Counsel where they are Parties, maintain no Suit, nor deny Right (though by Command from the King) to procure the King's Profit, and to be answerable to the King in Body, Lands and Goods, &c. By *Stat. 18 Ed. 3. c. 1.*

And the Statute 20 Ed. 3. enjoins, That the King's Justices shall do Right to all without Respect of Persons, notwithstanding the King's Letters to the contrary; and if any such Thing happen, they are to acquaint the Council with it: They shall take no Fee but of the King, &c.

The King in Judgment of Law is present in all his Courts, to minister Justice by his Judges to all his Subjects, according to his Kingly Office. By the Great Charter the King is presum'd to sit in Court, and to say *Nulli vendemus, nulli negabimus, vel differemus justitiam vel rectum.* And therefore every Subject, for Injury done him *in bonis, terris vel persona*, by any other Subject, may have his Remedy by Course of the Law, and have Justice done him freely without Denial, &c. *Co. Inst. 2 part, 549, 269, 39, &c.*

The King's Power of redressing Injuries not only extends to his own Dominions; but likewise to those belonging to a Foreign State; for where Judgment being pass'd against a Person, he flies to another Country, there may issue forth a Commission of Entreaty to the Judges in that Place where the Defendant is resident, and the Judge to whom the said Commission is directed, is to award Execution

cution according to the Laws of Nations. Adjudg'd 5 *Jac.* 1. in *B. R. Wier's Case*. And if a *Hollander*, or Person of any other Nation, buys Goods of a Merchant of *London*, and having given a Note under his Hand for the Payment of the same, then flies into *Holland* for Protection, the Vendor upon Proof of the Sale and Delivery of the Goods before the Lord Mayor of *London*, shall have a Certificate from the said Lord Mayor, under his Seal of Office, and the Government of *Holland* shall cause a legal Process to issue against the Party.

But where a Man's Life is concern'd, the Determinations of Foreign Judges are not to be executed; because the Offender is to be brought to a legal Trial by producing Witnesses Face to Face. In this Case a Foreign Prince ought to deliver up the Natural Subject to his Natural Lord, unless he be unjustly pursu'd. And no Inhabitant of *England* ought to wave the Justice of his own Sovereign, and fly into the Territory of another, but ought to seek it at Home, except it be where the Defendant becomes Fugitive; if he does, he shall be put out of the Protection of the King, and forfeit his Lands, Goods, and Chattels, &c. *Roll. Abr. fol. 176.*

An Alien born under the Obedience of a Foreign Prince, out of the Allegiance of the King of *England*, cannot prosecute any real or personal Action here for or concerning Lands or Tenements: And if an Alien make a Purchase to him and his Heirs, the King upon Office found, shall have the Lands after his Decease by Prerogative; for he can have no Heir to inherit, so that the Law casts the Freehold and Inheritance upon the King. *Dyer 283.*

But Aliens, by the Laws of Nations, may purchase in Fee or otherwise, a House or Warehouse for Accommodation, as a Merchant-Stranger, where their Prince or State is in Amity; and may retain the same, this being absolutely necessary for the promoting of Commerce; but the Law secures them nothing but a Habitation to trade and traffick in as Merchants. Children born within any of the Places possess'd by the King's Army in Time of War, tho' in the Dominions of a Prince of the utmost Distance, are esteem'd by the Law to be within his Majesty's Protection, if they are born of Parents Subjects. *5 Eliz. Dyer 224.*

The King's being in Court, in Judgment of the Law (as before is observ'd) to administer Justice to his People, and his Royal Prerogative, render him so much a Superior, that the High Court of Parliament, nor any other Court of Judicature, can pronounce Judgment upon him for any Thing transacted: This was the Opinion of a very Great Man in the Case of King *Richard* the Second; but it appears by the Parliament-Rolls, that the Lords proceeded against *Richard*, and adjudg'd him to perpetual Imprisonment; tho' having at the same Time a Regard to the Preservation of his Life; and the several Steps taken in this Affair, tho' they were very bad, yet they were very different from the unprecedented Proceedings of the High Court of Justice against the Royal Martyr King *Charles* the First. *Co. Inst. 2 part, 635, &c.*

And no Man can declare against the King, but he must sue by way of Petition. *Plowd. 241.* There shall be no Costs nor Damages awarded to the Defendant, when any Action is sued to the King's Use. *24 H. 8.* And if any one challenge a Juror for the King, he shall forthwith assign the Cause, which shall be presently tried. *33 Ed. 1.*

By

By the Common Law the King had for his Debt Execution of the Body, Lands, and Goods of the Debtor. But by Stat. 9 H. 3. If the Goods and Chattels of the King's Debtor be sufficient, and so can be made appear to the Sheriff, whereupon he may levy the King's Debt, then ought not the Sheriff to extend the Lands and Tenements of the Debtor, or of his Heir or Purchaser, &c. 2 part, Co. Inf. 19.

The Statute 9 H. 3. enacts, That where the King's Debtor dies, the King shall be serv'd before the Executor. And by the 3 Ed. 1. if a Sheriff having receiv'd the King's Debt, upon his next Account do not discharge the Debtor thereof, he shall be liable to a Forfeiture of treble Value, and a Fine at the Pleasure of the King.

All the Lands, Tenements, and Hereditaments, which any Accountant of the Crown hath while he remains accountable, shall be liable for the Payment of his Debts, and be put in Execution in like Manner as if such Accountant had stood bound by Writing obligatory: And in six Months after the Account paid, the same are to be sold to answer the Ballance in Arrear: But this not to extend to Charge any Accountant, whose yearly Receipt exceeds not 300 l. Stat. 13 Eliz. cap. 4.

And by 27 Eliz. the Accountant's Lands may be sold as well after his Death as in his Life; and as well where the Account is made, and the Debt known within eight Years after his Decease, as where the Account is made, and the Debt known, in his Life-time: But after the Accountant's Death and before the Lands are sold, a Writ shall issue out for the Heir to shew Cause why the Lands, &c. should not be sold; whereupon if the Heir do not prove unto the Court, That the Executors or Administrators of the Accountant have suffi-



cient, then the Lands shall be sold, &c. But the Heirs Lands are not to be sold during his Minority; and if the Accountant or Debtor had a *Quietus est* in his Life-time, it shall discharge the Heir of the Debr.

And the Heirs Sale *Bona Fide*, upon good Consideration, before the Writ awarded, shall be good to a Person not consenting to defraud the Crown, &c. But if Goods of the King be sold by any Person in Fair or Market, it shall not bind the King, as it does another Person. And if the King's Goods be pawn'd by a Stranger, the Contract for Payment of the Money, shall not be binding to the King. *Mich. 3 H. 6.*

If the King's Goods be wreck'd, and cast upon Ground, where a Subject hath Wreck of the Sea, who seisseth the same, the King may make his Proof at any Time when he will, and is not confin'd to a Year and a Day, as the Subject is. *Co. Inst. part 2, 168.*

In antient Time, Wreck of the Sea, and other Casualties, as Treasure-Trove in Land, Strays, and the like, were *Primi inventoris quasi totius Populi, sed postea ad regem translata fuerunt, quia non modo totius populi, sed Reipublicæ etiam caput est.* But if Treasure be found in the Sea, the Finder shall have it at this Day. *Bract. lib. 3. fo. 120. Britton 7, 26, &c.*

Goods and Chattels of Pirates belong to the King by his Prerogative. 4 *Part Co. Inst. 136.* Veins of Gold and Silver in the Grounds of Subjects, belong to the King by his Prerogative, for they are Royal Mines; but base Metals, as Tin, Lead, Copper, &c. are not the King's, but the Property of the Subject enjoying the Lands. *Bract. lib. 2. fo. 222.*

And

And by a late Statute, all Persons having Mines within the Kingdom of *England* or *Wales*, wherein any Ore is, or shall be discover'd, or wrought, in which there is Copper, Tin, Iron, or Lead, such Persons may enjoy the same Mine or Mines, or Ore, and dig and work the same, notwithstanding they shall be claim'd to be a Royal Mine or Mines; but the Crown is to have the Ore, paying such and such Rates *per Tun*, as are ascertain'd by the Statute.. See *5 W. & M. c. 6.*

The Prerogative of the King is so very extensive, and excellently contriv'd, that we find that to be Law almost in every Case of the King, which is Law in no Case of the Subject; and yet all the Liberties of the Subject are inviolably preserv'd and maintain'd. For tho' the Common Law allows so large a Prerogative to the Prince, it has a tender Regard not to injure others thereby.

The King's Prerogative is Part of the Law of *England*. 2 *Part Co. Inst.* 496. And it is summ'd up in the following Particulars, *viz.* The King alone without advising with his Parliament may declare War, make Peace, send and receive Ambassadors, make Leagues and Treaties with any Foreign States, give Commissions for Levying Men and Arms by Sea and Land, or for pressing Men, if need require, disposing of all Magazines, Ammunition, Castles, Fortresses, Ports, Havens, Ships of War, and publick Moneys, appoint the Metal, Weight, and Purity thereof.

By his Prerogative he may of his mere Will and Pleasure convene, adjourn, prorogue, remove, and dissolve Parliaments, may to any Bill pass'd by both Houses of Parliament, refuse to give his Assent, without assigning a Reason: May, at his Pleasure, increase the Number of the Members of both Houses, by creating more Barons, and bestowing

stowing Privileges upon any other Towns to send Burgesles to Parliament; but this Part of the Prerogative seems to be given up by our late Kings. He hath alone the Choice and Nomination of all Commanders, and other Officers at Land and Sea, the Nomination of all Magistrates, Counsellors, and Officers of State; of all Bishops, and other High Dignities in the Church; the bestowing of all Honours, both of higher and lower Nobility of *England*; the Power of determining Rewards and Punishments either by Pardoning the Offence, or remitting the Punishment. By his Letters Patent may erect new Universities, Boroughs, Colleges, Hospitals, Schools, Fairs, Markets, Forests, Chases, &c. And hath Power to grant Letters of Marque or Reprisal, safe Conducts, &c.

The King by his Prerogative may sue in what Court he please, and distrain where he will; Debts to the King are to be first paid; and until his Debt be satisfied, he may protect the Debtor from the Arrest of others; and the King's Debtor hath a Prerogative Remedy against all others. No Sale of the King's Goods will take away his Property, if he hath been defrauded of them; no Occupancy shall be good against the King, nor shall any Entry prejudice his Right. Where the King is Party, his Officers by Vertue of a Process at Law, may enter, and justify the Breaking open of any Man's House where Entrance is denied; and a Spiritual Living is not full against the King by Institution only, without Induction.

The King hath not only the Patronage of Bishopricks, and the supreme Right of Patronage over all Ecclesiastical Benefices in *England*; so that if the Patron do not present, nor the Ordinary, &c. in Time, the Right of Presentation comes to him, but also may unite, separate, enlarge or contract the Limits of any old Bishoprick, erect new Bishopricks,

ricks, &c. And the Convocation is to be assembled by the King's Writ, where, with the Advice of the Synod, Canons, Ordinances, and Constitutions relating to the Church are made and pass'd. 25 H. 8.

The King is not bound by any Acts of Parliament, unless they concern the Common Wealth, or he is specially named: And he hath Power to dispense with some Acts of Parliament, and Penal Statutes, by *Non Obstante*, where himself is only concern'd. To Pardon a Man condemn'd by Law, except in Appeals of Murder. To moderate the Rigour of the Laws, according to Equity and Conscience; to grant Special Privileges and Charters to any Subjects. And the Law does attribute to the King divers Excellencies; as that no Imperfection shall be found in the King, no Error, no Injustice, no Negligence, no Infamy, no Corruption of Blood; no Nonage or Minority, &c. And according to the Opinion of King Charles the First, the King's Prerogative is to defend the People's Liberties, and the People's Liberties to strengthen the King's Prerogative.

These are the Particulars of the Royal Prerogative of the Kings of England; and the Queen Consort is not without a certain Prerogative or Privilege beyond other Women; for tho' she be a Feme Covert, she may purchase Lands in Fee-simple, make Leases and Grants in her own Name without the King (and if she be an Alien, without any Act of Parliament for Naturalization) she hath Power to contract as a Feme Sole, to sue, make Deeds of Gift, and receive by Gift from her Husband, which no other Feme Covert may do. She may present to a Benefice; and she may not be impleaded 'till petition'd.

Besides these Rights and Privileges peculiar to our Princes, and the tender Concern of the Law, in declaring it Treason to conspire the Death of the King,



flowing Privileges upon any other Towns to send Burgesses to Parliament; but this Part of the Prerogative seems to be given up by our late Kings. He hath alone the Choice and Nomination of all Commanders, and other Officers at Land and Sea, the Nomination of all Magistrates, Counsellors, and Officers of State; of all Bishops, and other High Dignities in the Church; the bestowing of all Honours, both of higher and lower Nobility of *England*; the Power of determining Rewards and Punishments either by Pardoning the Offence, or remitting the Punishment. By his Letters Patent may erect new Universities, Boroughs, Colleges, Hospitals, Schools, Fairs, Markets, Forests, Chases, &c. And hath Power to grant Letters of Marque or Reprisal, safe Conducts, &c.

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King, Queen, or Prince, &c. as I have already observ'd; there is so precious a Regard to be had to the Person of the King, that on any Indisposition; no Physick ought to be administred to him without Warrant sign'd by the Advice of his Council; no other Physicians to be employ'd but such as are mention'd in the Warrant, and they are to prepare all Things with their own Hands. *Co. Inst. 4 part, 251.*

I shall conclude this Head of my Treatise with the Grandeur of his Majesty in the House of Lords, and the Manner of Seating the Nobility of the Kingdom round about him, as settled by Statute 31 H.8. which is a Curiosity not to be omitted. And first the King in his Royal Robes, is plac'd at the upper End of the Room, in a Chair of State elevated with three or four Steps, and a Canopy of State over his Head. On the King's Right Hand is a Seat for the Prince of *Wales*, and on the Left Hand a Seat for the Duke of *York*.

On the Right Hand of the King and next to the Wall, are plac'd on a Form, the Archbishop of *Canterbury*, Archbishop of *York*, Bishop of *London*, Bishop of *Durham*, Bishop of *Winchester*, and next to them all the other Bishops according to their Seniority. On the King's Left Hand, upon Forms, sit the Lord Chancellor, Lord Treasurer, President of the Council, and Lord Privy Seal; if they are Barons, above all Dukes, except those of the Royal Family.

The Great Chamberlain, the Constable, the Marshal, the Lord Admiral, the Lord Steward, the King's Chamberlain, to be plac'd after the Lord Privy Seal, above all other Peers of the same Estates or Degrees; the Dukes, Marquesses, and Earls, not having any Offices, are plac'd next them, on the Left Hand-side, according to their Creations.

tions. And in the first Form across the House, below the Wool-sacks sit the Viscounts, and upon the next Form the Barons. The King's Chief Secretary being of the Degree of a Baron, is to be plac'd before all Barons.

The Lord Chancellor, of late Times, either stands behind the Cloth of State, or sits on the first Wool-sack before the Chair of State, his Great Seal and Mace by him. And upon other Wool-sacks sit the Judges, the King's Council at Law, and the Masters of Chancery; who not being Barons, only sit there to give their Advice when it is requir'd.

The Clerk of the Crown, and Clerk of the Parliament sit on a Form behind a Table. Without the Bar sits the King's first Gentleman Usher, called the Black Rod; who has under him a Gentleman Usher that waits at the Door within, a Cryer without, and a Serjeant at Arms.

When the King is present with the Crown on his Head, none of the Lords are cover'd. All his People at other Times kneel to him on their first Addresses; and he is always serv'd upon the Knee. So that we may say with the learned *Bracton*,

*Rex est vicarius & minister Dei in terra, omnis quidem sub eo, & ipse sub nullo nisi tantum sub Deo.*

*Bract. lib. 1. c. 8.*

C H A P.



## CHAP. II.

*Of the Laws relating to the Nobility of England; the Derivation of their Honours; their Meeting in Parliament; Enactings of Statutes; Judicature of the House of Lords; Trials of Peers, Privileges, &c.*

**A**LL the Degrees of Nobility and Honour are derived from the King, as the Fountain of Honour; but according to *Formal*

*Nobilitas sola est atque unica virtus.*  
The King's eldest Son is born Duke of Cornwall, afterwards he is created Prince of Wales; and to distinguish him, in the middle of the Arch of his Coronet, are a Ball and Cross like unto the Royal Diadem. From the Day of his Birth he is styled Prince of Wales, a Title originally given by Edward the First: And all his Titles are Prince of Wales, Duke of Cornwall, and Earl of Chester.

The first Duke we had in England, was Edward the Black Prince, (so fam'd in our English Histories for Heroick Actions) who was created a Duke in the 11th Year of King Edward the Third. Robert de Vere, Earl of Oxford, created Marquess of Dublin in Ireland, Anno 8th of Richard the Second, was the first Marquess: Hugh Lupus was made Hereditary Earl of Chester, by William the Conqueror. John Beaumont, made Lord Viscount Beaumont, by King Henry the Sixth, in the 18th Year of his Reign,

Reign, was the first Viscount. And John Beauchamp of Holt, was the first Baron created in England, made the fifth of Richard the Second.

In ancient Records, the Word Baron included all the Nobility of England, because regularly, all Noblemen were Barons, though they had a higher Dignity; and therefore the Charter of King Edward the First, which is an Exposition of what relates to Barons in *Magna Charta*, concludes, *Testibus Archiepiscopis, Episcopis, Baronibus, &c.* And the great Council of the Nobility, when they consisted of, besides Earls and Barons, Dukes, Marquesses, &c. were all comprehended under the Name *De la Councell de Baronage. Glanv. c. 4.*

But a Baron, holding Land of the King to him and his Heirs, *per servitium Baronie*, is no Lord of Parliament, until he be called by Writ to the Parliament. These Barons have given them two Ensigns to remind them of their Duties, first a long Robe of Scarlet, in respect whereof they are accounted in Law *De Magno Concilio Regis*; and secondly, they are girt with a Sword, that they should ever be ready to defend their King and Country. *Co. Inst. 2 Part, 5.*

For the Derivation of our Nobility; a Duke, in Latin, *Dux*, *a ducendo*, signifies the Leader of an Army; our Noblemen being anciently either Generals of Armies, or Governors of Provinces, &c. they are created by Patent, and formerly the Honour was granted for Life only, but since made Hereditary. In ancient Times they were instituted by Cincture of Sword, Mantle of State, Imposition of a Cap, Coronet of Gold on the Head, a Verge of Gold in their Hands. Their Mantles are guarded with four Guards, and their Coronets have only Leaves without Pearls. A Duke out of the King's Presence may have a Cloth of State,

and

so may his Dutches, and her Train born up by a Baroness.

A Marquess, *Marchio*, had his Denomination of Honour from the Government of *Marches* : He is created by Patent (and anciently by Cinſture of Sword, Mantle of State, &c.) His Mantle is double Ermin, three Doublings and an half; his Coronet hath Pearls and Strawberry-leaves intermix'd. A Marquess and Earl may have likewise a Cloth of State, but different from that of a Duke; and a Marchioness, and a Countess may have their Trains born up, the former by a Knight's Wife, and the latter by the Wife of an Equire.

An Earl, *Comes*, was heretofore correlative with *Comitatus*; and anciently there was no *Comes* or Earl but had a County or Shire for his Earldom, but of late the Number of Earls very much encreasing, several of them have chosen for their Titles, some eminent part of a County, considerable Town, Village, or their own Seats, &c. Then besides these local Earls, there are some Personal, and others Nominal; as the Earl Marshal of *England* is Personal, and Honorary, and the Earl *Rivers*, *Cadogan*, *Stanhope*, &c. who derive their Titles from their Families, are Nominal. An Earl's Mantle has three Doublings of Ermin, and his Coronet hath the Pearls raised upon Points and Leaves between.

Viscounts, *Viccomes*, from their being formerly Governors of Counties, are made by Patent as an Earl: Their Mantles have two Doublings and an half of plain white Fur; Coronets only pearl'd with a row of Pearls, without certain Number, close to the Chaplet. Viscounts are stiled by the King, *Consanguinei nostri*; and those which in ancient Times were created Counts, or Earls, were of the Blood Royal; for which Reason our *British*

Monarchs to this Day, call them in all publick Writings, our most dear Cousin: They likewise originally did, and still may, use the Style of *Nos.*

Baron is, *Vir Notabilis & principalis*: And the chief Burgeses of *London* were in former Times Barons. The Earl *Palatines*, and *Marches* of *England*, and Earls of *Chester*, had anciently their Barons under them; but no Barons but those as hold immediately of the King, are Peers of the Realm. A Baron has two Guards or Doublings on his Mantle, and his Coronet hath six Pearls upon the Circle.

When a Lord is newly created during the Sitting of the Parliament, he is introduced into the House of Peers, by two Lords of the same Form, in their Robes, Garter King at Arms going before, and his Lordship is to present his Writ of Summons to the Lord Chancellor; which being read, he is conducted to his Place. Lords by Discent are introduced with the same Ceremony, the presenting of the Writ excepted.

The younger Sons of the Royal Family, are created Dukes or Earls of what Places the King pleases: The Daughters are styled Princesses; and to all the King's Children belongs the Title of Royal Highness.

The eldest Sons of a Duke are styled Marquesses, and the younger, Lords; A Marquess's eldest Son bears the Title of an Earl, and the younger Sons Lords; and an Earl's eldest Son shall be styled his Lordship, and all his Daughters be Ladies, but his younger Sons are not Lords; and all this by the Curtesy of *England*; but these Titles shall not be given them in legal Proceedings, and they shall give Place to Peers of the same Title.



As we have Noblemen of several Ranks, so have we Noble Women, and those of three sorts, viz. By Creation, Descent and Marriage: And first, King *Richard* the Second created the Countess of *Norfolk*, Dutcheſs of *Norfolk* for Life; King *Henry* the Eighth made *Anne Bullen* Marchioness of *Pembroke*: King *James* created the Lady *Compton*, Wife to Sir *Thomas Compton*, Countess of *Buckingham*, in the Life-time of her said Husband, without any Addition of Honour to him: The said King also made the Lady *Finch*, Viscountess of *Maidstone*, and afterwards Countess of *Winchelsea*, to her and the Heirs male of her Body: And his present Majesty King *George*, has made the Dutcheſs of *Soulingburgh*, a great Lady of Foreign Extraction, Dutcheſs of *Munster* in *Ireland*.

And all Women marrying a Peer, become Noble; but if they afterwards intermarry with a Commoner, they lose their former Dignity, unless such Women are Noble by Descent, or Creation, in which Case if they marry Husbands under their Degree, they remain always Noble; and by the Custom of *England*, Women Noble by Marriage only, retain their Nobility. *Co. Litt. p. 16.*

If an *English* Woman born, takes to Husband, a *French*, or *Spanish* Nobleman, though he be made Denizen, she shall not bear the Title of Dignity in Proceedings at Law; and if a *German* Woman, &c. marry a Nobleman of *England*, unless she be made Denizen, she cannot claim the Title of her Husband, no more than her Dower, &c.

A Nobleman, whether a Native or Foreigner, who has his Nobility from a Foreign State, though the Title of Dignity be given him, (for the highest and lowest Degrees of Nobility are universally acknowledg'd) yet in all our legal Proceedings no Notice is taken of his Nobility: But

the Laws of *England* prohibit all Subjects to receive any Hereditary Title of Honour or Dignity, of the Gift of any Foreign Prince, without the Consent of their Sovereign.

Besides these Honours relating to the Quality, there are Titles conferred on the lower Nobility, or more properly the Commons of *England*, as *Baronets*, *Knights*, *Esquires*, &c. *Baronets* were first instituted by King *James* the First, and are created by Patent to a Man and his Heirs Males: Their Number at first were 200, but now they are without Limitation; and the first Baronet that was made, was Sir *Nicholas Bacon*.

The Honour of Knighthood is commonly given for some personal Merit, which therefore dies with the Person. The *Knights Bannerets* are made only in the Time of War, and is a high Honour, as they may bear Arms with Supporters. Knights of the *Bath*, so call'd from their Bathing before Creation, are generally made at a Coronation: And this Knighthood was introduced by King *Henry* the Fourth. Knights Bachelors, called *Equites aurati*, from the gilt Spurs usually put upon them; they are girded with a Sword, and made for military Services, or bestowed on Persons of Noble Parentage.

But the *Knights of the Garter*, an Order conferred upon the most excellent and renown'd Persons, is so great an Honour amongst the Nobility, that above thirty Emperors and Foreign Kings have thought it worthy their Acceptance. This Order was founded by the warlike, glorious, and gallant King *Edward* the Third, before the Institution of that of *St. Michael* in *France*, or any other Lay Order in Christendom: It was instituted from the Countess of *Salisbury*'s dropping her Garter in a Dance before his Majesty, which

the King taking up, and seeing some of his Nobility smile, he said, *Honi soit qui mal y pense*, which has ever since been the Motto of the Garter, declaring such Veneration should be done to the Silken Tie of that beautiful Lady, that the best of them should be proud of enjoying the greatest Honours that way.

The honourable Society of this Order is intituled to St. George; and they are a College or Corporation, having a Great Seal, &c. a Sovereign who is always the King of England, twenty-five Companions Knights of the Garter, a Dean and Canons, &c. and twenty-six poor Knights: Then there are Officers, as Prelate of the Garter, who is the Bishop of *Winchester*; Chancellor of the Garter, likewise a Bishop; a Register, Principal King at Arms, called Garter, &c.

A Knight of the Garter wears daily abroad, a blue Garter deck'd with Gold, Pearls, and precious Stones, on the Left Leg; and in all Places of Assembly, upon a Coat on the Left-side of the Breast, a Star of Silver Embroidery; and the Picture of St. George enamelled upon Gold and beset with Diamonds, at the end of a blue Ribbon that crosses the Body from the left Shoulder: And when they wear their Robes, they have a Mantle, a high black Velvet Cap, a Collar of SS's, &c.

Esquires created by the King, have put about their Necks a Collar of SS's, and a pair of Silver Spurs bestow'd on them; these were wont to bear before the Prince in War, a Shield or Lance. Then there are other Esquires, as Sons of Viscounts, Barons, &c. Officers of the King's Courts, Counsellors at Law, Justices of Peace, &c. who are Esquires in Reputation; and a Gentleman is one, who without any Title bears a Coat of Arms, or whose Ancestors have been Freemen.

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## The Gentleman's Law.

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The Antiquity of our *English* Gentry, my Lord *Coke* tells us, is best known *per Insignia*.

*Armaque fixit*

*Troja.*

*Virgil.*

And as that great Man observes, it is worthy Remembrance and Example, That when *Thomas Lord Cromwell*, who was promoted to Peerage in the Reign of King *Henry* the Eighth, by a flattering Herald, was offered to fetch his Pedigree from the ancient Lord *Cromwel*, that he might bear his Coat of Arms, his Lordship answer'd, That he would bear a Coat of his own, least another Man's might not fit him, and should be taken from him. *Co. Inst. 4 Part, 363.*

When Honour and Arms being the Ensigns of Honour, are once bestow'd on any Person, or possessed by any; if there arise Contention between Competitors for the same amongst the Nobility, the ancient Constitution of the Realm hath ordained a special Court, the Jurisdiction whereof is immediately deriv'd from the Crown, and the Judges have been generally the Lord High Constable, and the Earl Marshal; but of late the Earl Marshal only determines Controversies of this Nature.

Nobility may be granted for Term of Life, by Act in Law without any Creation, as I have already hinted in Case of Marriages; for Instance, If a Duke take a Wife, she is a Dutchess in Law, and so of a Marquess, Earl, &c. And the King may create either Man or Woman Noble for Life, but not for Years, for then it would go to Executors, &c. *Co. Litt. 16.*

But the King cannot regularly make a King within his own Kingdom, though *Henry* the Second,

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by Consent of Parliament, created his Son *John*, King of Ireland; and King *Richard* the Second, by his Letters Patents created *Robert de Vere*, Duke of Ireland, and granted to him for Life, *Totam terram & Dominium Hiberniae, & Insulas eidem terrae adjacentes, ac omnia castra Comitatus, &c.* Prince *Edward*, eldest Son of King *Henry* the Third, was made Lord of Ireland, and his Consort had a Duty call'd *Aurum Reginae*, which shews she was in Effect Queen, though she had not the Title, and the Prince had Royal Dominion and Authority. *Co. Inst. 4 Part, 357, 360.*

The Letters Patents to *Robert de Vere*, were authorized by Parliament: And 13 R. 2. the King gave the Title of Duke of *Aquitain*, to *John* of *Gaunt*, Duke of *Lancaster*, his Uncle, but it was by Consent of Parliament, and it could not be granted by Letters Patent, because it was one of the Titles of the Crown. And this first began and ended in him.

*Henry de Beauchamp*, Earl of *Warwick*, for the singular Favour which King *Henry* the Sixth bore to him, was crowned King of *Wight Island*; but I could never find any Letters Patents of this Creation, and some great Men have been of Opinion, The King could not by Law create a King within his own Kingdom, because there cannot be two Kings of the same Place: And afterwards the same Prince named him *Primus Comes totius Angliae*. *Camden.*

The same King created *Edmond* of *Hadham*, Earl of *Richmond*, and granted him Precedency before all other Earls. He also created *Jasper* of *Hatfield* Earl of *Pembroke*, and gave him Precedency before all other Earls, next to his Brother the Earl of *Richmond*: And Queen *Mary* the First, for some eminent Services perform'd by *Henry Ratcliff*, Earl of

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of *Sussex*, granted to him by Patent a Privilege beyond any other Nobleman, viz. that he might at any Time be covered in her Presence: But this Liberty I take to be allowed with regard to King *Philip* her Husband, who with other Kings of *Spain*, usually indulge their principal Nobility, called *Grandeess*, with this Favour.

Though Dignities are granted from the Crown, yet they cannot be surrendered to the Crown, the Lord Viscount *Purbeck's* Case, on levying a Fine to the King: And the Reasons given in the House of Lords were these: That the Dignity of Peerage is personal, annex'd to the Blood, and so inseparable, that it cannot be transferred to any other Person, or surrendered to the Crown; it can neither move forward, nor backward, but only downward to Posterity; and nothing but Corruption of Blood can hinder the Discend, as if the Ancestor be attainted of Treason or Felony, &c.

A Dignity differs from other Inheritances, and goes not according to the Rules of the Common Law, nor is governable by them; for it descends to the Half Blood, there is no Coparcenership in it, but the eldest takes the Whole. A Fee-simple will go to a Nobleman without the Word *Heirs*. *Co. Litt.* 27. and my Lord *Coke*, in his 4th *Institute*, is of Opinion, That Honours cannot be extinguished but by Act of Parliament: And Baronage and Peerage is to be determined by the Records of the Lords House.

The Earl of *Shaftsbury* spoke in this Case to the following Effect, That the Lords never suffered their Honours to be tried at any Court at Law, or any where but before themselves: That the Concurrence of all Parties may extinguish other Inheritances, but in this Case the Concurrence of all cannot be without Act of Parliament; for the

whole Kingdom have an Interest in the Peerage of every Lord. The House of Lords is the next Thing to the Crown, and as in Descent of the Crown, the whole Kingdom hath such an Interest in it, that the King cannot surrender or alien it, so in a proportionable Degree, tho' far less, the King and Kingdom have an Interest in their Lordships, Dignities and Titles.

But Honours officinary, as Earl Marshal of *England, &c.* such as have Relation to an Office or Land, are transferrable over. In the Time of King *Edward the First*, *Bigod* surrendered the Honour of Earl Marshal of *England* to the King. The Earl of *Pembroke*, 8th of *Edward the Fourth*, surrender'd his Title to the King, but had a more ancient Honour entail'd on him. *Charles Brandon*, Viscount *Lisle*, in the Reign of *Henry the Eighth*, surrendered his Honour for a Dukedom. And my Lord *Stafford* surrendered, and had conferred on him a new Honour: So that in all these Cases, the Surrenders did not prejudice their Blood, or remove them out of the House, tending only to their Advancement.

From the Reign of *Edward the Second*, to *Henry the Sixth*, one Branch of a Family sat in the House of Peers by Vertue of a Grant from the other Branch. *Daincourt's Case*, 4 *Inst.* 126. The Earldom of *Chester* was first granted 17 *H. 3.* and transferred 29 *H. 3.* and there was an Attempt made in the Lord *Fitzwater's Case*, to make a Baron by transferring of the Dignity; but all these Precedents have been disallowed; and the Duke of *Bedford*, who in the Reign of *Edward the Fourth*, was degraded for Poverty and Indigence, lost not his Peerage by Surrender, but by Authority of Parliament.

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In the Reign of *Edward* the Fourth, the Lord *Hos*, by Deed under Hand and Seal, granted his Name, Arms, and Dignity over, but the same was in Parliament adjudg'd void; which shews that Dignities are not to be surrendered or transferred in any Case, unless it be officary, without Authority of Parliament.

But notwithstanding Honours may not be surrendered to the Crown, by Fine or otherwise, so as to bar a Peer's Title of Honour, or the Right of a Person claiming such Title under him; yet an Alienation may be made of a Barony, especially for continuance of it in the Name; and Heirs general, or next Heirs female, be excluded thereby; and to make good this Assertion, I shall produce several Cases.

In the Reign of *Edward* the Third, *John Handlowe*, in the Right of *Maude* his Wife, was seised of the Manor of *Atton Burnel*, &c. for Life, which by Fine was settled, the Remainder to *Nicholas*, Son of the said *Maude*; *John Lovel* being next Heir of the said *Maude*, as her first-born Son by her first Husband. But afterwards the said *Nicholas* was summon'd among the Barons of this Realm to the Parliament.

Anno 18 E. 3. *Thomas de Beauchampe*, Earl of *Warwick*, by a Fine levied, intailed the Manor and Castle of *Warwick*, with divers other Possessions on himself for Term of his Life, Remainder to *Guy*, his eldest Son, and the Heirs males of his Body, and for want of such Heirs, Remainder to *Thomas Beauchamp*, Brother of the aforesaid *Guy*, and the Heirs males of his Body, &c. And afterwards the said *Guy* died without Heirs males of his Body, leaving two Daughters and Heirs living. Afterwards the said Earl died, and *Thomas* the Son, entered into the Castle and Manor aforesaid, with



other the Premises, and was Earl of *Warwick*, by Reason of the Intail aforesaid, notwithstanding *Katherine*, Daughter of *Guy*, next Heir of Earl *Thomas* the Father, was living.

But Claim by an Heir female, hath sometimes been allow'd, which was the Case of the Lord *Dacres*; *Thomas* Lord *Dacres*, had Issue *Thomas* his eldest Son, *Ralph* his second, and *Humphry* his third; *Thomas* died in the Life-time of his Father, having Issue *Joan*, his Daughter and Heir, who married Sir *Richard Fines*, after *Thomas* the Grandfather died, whereupon *Richard Fines*, in the Reign of *Henry* the Sixth, was declared by Patent Lord *Dacres*. Though the Reason in this Case, why *Ralph* and *Humphry* were not regarded, was an Attainder by Parliament; which being reversed, *Humphry* challeng'd the Barony, and had likewise the Title of Lord *Dacres*. And in ancient Times it has been decided, that no Man should take upon him the Style of Lord, *jure uxoris*, until he had by his Wife a Child, whereby he should be intitled by the Curtesy to her Inheritance.

By a Fine levied 23 *Edw.* 3. *Thomas* Lord *Berkley*, who was seised in Fee of the Castle and Manor of *Berkley*, &c. intail'd the said Castle, &c. to himself for Life, Remainder to *Maurice* his Son in Tail, with other Remainders; which said *Maurice* had Issue *Thomas* Lord *Berkley*, and Sir *John*, which *John*, died in the Life of his Brother, leaving *James* his Son and Heir living; after the said *Thomas* died, leaving *Elizabeth* his Daughter and Heir, married to *Richard* Earl of *Warwick*, after whose Decease, *James* the Nephew entred into the said Castle, &c. and was summoned to Parliament as Lord *Berkley*.

Anno 22 R. 2. *Maude*, Countess of *Angiers* and *Northumberland*, Heir of the Barony of *Cockermouth*,

mouth, after the Death of *Lucy* her Brother, who died without Issue, intail'd the Honour, &c. of *Cockermouth* to her self, and *Henry Percy* Earl of *Northumberland*, then her Husband, and to the Heirs males of their Bodies upon Condition to bear the Arms of the said Earl; and the said Earl, and after him *Henry Percy* his Son, were Barons of the said Honour by the said Assurance, and the Heir of the said Countess never had the said Arms.

*Tho. De la Ware*, 5 H. 6. died seised in Tail, by reason of a Fine levied in the Time of his Ancestors, of the Barony *De la Ware*, &c. having no Issue; and *Reginald West*, of the Half Blood was next Heir by the Intail, and was summoned to Parliament, although *John Griffith* was Heir of the whole Blood.

Anno 18 H. 8. *John de Vere* Earl of *Oxford*, died seised in his Demesne as of Fee-tail to him and the Heirs males of his Body issuing, of the Honour and County of *Oxford*, without Heirs of his Body, and his three Sisters, *Elizabeth*, *Ursula*, and *Dorothy*, were his next Heir general; but *John de Vere* next Heir male, was Earl of *Oxford*, by reason of the said Intail, and none of the said three Heirs obtain'd the Dignity.

In the Reign of *Queen Mary*, *William Lord Paget* was seised in Fee of the Baronies of *Longden* and *Haywood*, &c. and being so seised by Fine, intailed the said Baronies to him and the Heirs males of his Body, and afterwards Anno 5 Eliz. died, leaving *Henry* his Son next Heir male, which *Henry* entered into the Baronies aforesaid, by vertue of the aforesaid Fine, and died seised, leaving *Elizabeth* his only Daughter and Heir, after whose Death *Thomas Paget*, Brother and Heir male of the said *Henry*, entered into the Baronies and was summoned to the Parliament.

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Thus much for entailing of Honours in Families; and I cannot in this Place omit taking Notice of a Descent of an Earldom where Sisters were left as Heir. In the Reign of King *Henry* the Third, a Judgment was obtained touching the Descent of the Earldom of *Chester*, after the Death of the then Earl, that he dying without Issue male, the Earldom should be divided as other Lands amongst his Sisters, and not go to the eldest; but this Judgment was held erroneous: For Inheritance concerning Matters of Honour, being Things in their Nature participating of Superiority and Eminency, are not partible in any Equality among many, but must descend to one, and that is the eldest Daughter, where there are no Heirs males to claim the same.

I have been a little particular in respect to Creations, Preservation and Entailing of Dignities, to illustrate our *English* Nobility, and shew how their Descents have been settled; I now proceed to *Privileges* belonging to the Peerage, beyond other Persons, warranted by the Laws of the Land.

At Common Law it was lawful for any Peer to retain as many Chaplains as he would, but by the Statute 21 *H. 8.* their Number is limited, viz. to an Archbishop, and Duke, six Chaplains, with Dispensations to keep two Benefices with Cure; to every Marquess, or Earl, five, with the like Privilege; to the Lord Chancellor, every Baron and Knight of the Garter three Chaplains, with the same Privilege; the King's Secretary, Almoner, Controller, &c. two; Master of the Rolls two; Chief Justice of the King's Bench, one, &c.

In many Cases the Protestation of Honour shall be sufficient in Noblemen, as in Trial of Peers, they proceed upon their Honour, not upon Oath. And  
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in an Action of Debt upon Accompt, the Plaintiff being a Peer, it shall suffice to examine his Attorney, and not himself on Oath: But if a Nobleman were to give Evidence to a Jury, some Authors are of Opinion, that unless he be sworn, they are not oblig'd to credit his Protestation any further than they think in their Conscience is conformable to Truth. *Bract. lib. 5. c. 9. 1 H. 4. 13 H. 8.*

For Treason committed by a Peer of the Realm, he shall be tried by Judgment of his Peers, Lords of Parliament: But Noblemen of any other Country, or Persons, Lords in Reputation only, are not accounted Peers. And if a Nobleman be indicted of Murder, or arraigned of Felony, he shall be tried by his Peers; but on an Appeal, which is the Suit of the Party, he shall be tried by an ordinary Jury of twelve Men; though if he be found guilty, he shall not be hang'd, but be beheaded, which is out of the King's Special Grace, not *ex debito*. 2 Part. Co. Inst. 49.

In any Trial where a Peer of the Realm is Plaintiff, or Defendant, there must be returned of the Jury at least one Knight, or it shall be Cause of Challenge: But Peers on the Trial of a Peer may not be challenged, as Jurors may *in favorem vite*, in Case of a common Person; the Law presuming that they being all Peers of the Realm, and Judging upon their Honour, they cannot be guilty of Falshood, &c.

In Civil Causes, a Peer may not be impanell'd upon the Jury, nor upon any Inquests, though the Matter hath relation to two Peers: And if any Peer be returned upon such Jury, a special Writ shall issue for his discharge from Service. Every Peer of the Realm called to Parliament, hath the Privilege of constituting a Proxy to vote for him in his Absence upon a lawful Occasion, which is a Liberty



Liberty no Commoner has. But such Proxies are to be entered in Person; and if Peers neither come, nor make their Proxies, they have been anciently amerced, a Baron 100 l. *&c.* 31 H. 6. And Proxies have been upon some Occasions denied by the King, *viz.* the 6, 27 and 39 *Edw.* 3. 6 and 11 R. 2.

No Peer can be assessed towards the Militia, but by an Assessment made by six or more Peers: The Houses of Peers cannot be searched for Popish Books prohibited, without a Warrant under the King's own Hand, and the Hands of six of his Privy Council, whereof four to be Peers: And no Dwelling-house of a Peer, where he or his Wife shall be resident, shall be searched for Conventicles, but by Warrant under the Sign Manual, or in the Presence of the Lieutenant, or one Deputy Lieutenant, and two Justices of the Peace. 13 and 14 Car. 2. 22 Car. 2. *&c.*

A Peer of the Realm being sent for by the King, in coming and returning, may kill a Deer or two in a Forest through which he passes; but it is not to be done privately, without the View of the Forester, or if he be absent, without causing one to blow a Horn. 9 H. 3.

Besides these Privileges, the Laws of England are extremely tender of the Honour and Reputation of a Nobleman; there being Statutes on purpose to hinder all Offence by false Reports. 2 R. 2. c. 5. and 12 R. 2. c. 11.

On these Statutes an Action of *Scandalum Magnatum* is laid, which is of a superior Nature to the ordinary Action of Scandal on the Case; the Crime being against the Publick, as well as an Offence to the particular Person. For the Statute 2 R. 2. enacts, That none shall devise, speak, or tell any false News, Lies, *&c.* of any Prelate, Lord, or other great Officer, whereby any Discord or Slander may arise, and any Mischief happen to the Realm.

Realm. And the Statute 12 R. 2. enacts, That when any Person having spoken Falsities, &c. against a Peer, and cannot produce the Author, he shall be imprison'd, and punish'd by the King's Council.

The Plaintiff may bring his Action in the Name of the King, and in his own Name, and recover Damages, and the Defendant shall be otherwise punished. And it matters not in what manner the Slander is divulged, whether by Speech or Writing, reported from another, or by a Man's self, hanging up a Writing, or Picture in an open Place, &c. And if the Slander be published in the Nature of a Libel, it is punishable by Indictment, Fine and Imprisonment. *Ca. 5. 125. Crompt. 13. Dyer 285. 2 Inst. 228. Keil. 26.*

If a Nobleman menace another Person, whereby such other Person fears his Life is in danger, no *Supplicavit* shall issue but a *Subpoena*, and when the Lord appears, instead of Surety, he shall only promise to keep the Peace. *35 H. 6.*

No *Capias* or Exigent can be sued out against Peers of the Realm, for Actions of Debt, or Trespas; and no *Essoin* lies against them. The Person of a Peer, as well out as in Parliament-Time, is privileged from all Arrests, unless for Treason, Felony, Breach of the Peace, &c.

Yet a Peer of this Realm, or Lord of Parliament, &c. may out of the Time of Privilege, be prosecuted in any of the Courts at *Westminster*, Court of Chancery, &c. And any Person having Cause of Suit against a Peer, may immediately after any Dissolution, Prorogation, or Adjournment of both Houses of Parliament for above the space of fourteen Days, until both Houses shall meet or re-assemble, exhibit a Bill or Complaint in the Chancery, Exchequer, &c. and proceed by

Letter, or *Subpoena*, as is usual, upon leaving a Copy of the Bill with the Defendant, or at his House, Lodging, or last Place of Abode, and for want of Appearance or Answer, or for Non-performance, or Breach of any Order, or Decree, may sequester the Estate of the Party; tho' not arrest the Body of any Peer, or Member of Parliament, &c. entitled to Privilege during the Time of Privilege. 12 W. 3.

The Courts at *Westminster*, &c. may after such Dissolution, &c. proceed to give Judgment, make Degrees, and award Execution: And the Defendant may be distrained by his Lands and Tenements, Goods and Chattels, which is called *Magna Districio*. *Britt. p. 52.* By this Writ of *Districio*, of late Years, on Non-appearance, &c. the Coaches and Horses of several peers of this Kingdom, and Members of Parliament, have out of the Time of Privilege been distrain'd, and Cattle seiz'd upon their Lands, to compel them to appear, &c.

But the Privilege of a Peer is so great in respect to his Person, that the King may not restrain him of his Liberty, without Order of the House of Lords, unless it be in Cases of Treason, &c. *ut supra.* An extraordinary Case of this Nature, was the Earl of *Arundel's*, in the Reign of King *Charles* the First.

The Earl of *Arundel* being imprisoned by the King, without the Consent of the House of Peers, on finding the Earl absent from his Place, they petitioned his Majesty, and having a Message from the King, acquainting them that he was restrained for a Misdemeanour personally to his Majesty, after diligent Search into Statutes and Records, by Lords Committees for Privileges, &c. they found it their Privilege, That no Lord of Parliament within the usual Times of Privilege, was to be imprisoned

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prisoned without Order of the House, except it be in Cases of Treason, Felony, &c. that it was the undoubted Right of the Peers; and by another Petition, humbly prayed, that the said Earl might be admitted again to his Seat in Parliament.

This last Petition being presented to the King, he answered, That it was an Affair of Consequence and required Time; Upon this, the Lords to preserve the Privilege of their House, presented another Petition, and afterwards a fourth, and received very warm Messages from his Majesty; but at last the King not being able to satisfy the Lords, as failing in his Expectations of finding larger Accusations against the Earl of *Arundel*, took off the Restraint from his Lordship, whereby he had Liberty to come to the House as usual.

All Peers of the Realm are looked upon as the King's Hereditary Counsellors. And the Members of the Privy Council, are such as the King shall please to chuse, out of Persons of the highest Rank, eminent not only for Estates, but for Wisdom, Honour, Integrity, &c.

The Court of *Privy Council*, or Council Table, is of great Antiquity and Honour. The way of Government in *England*, was originally by the King and his Privy Council, and all our Kings have made this very much the Standard of their Transactions, determining Controversies of great Importance, sometimes touching Lands and Rights between Party and Party, of which there are many Precedents.

At present the King and his Privy Council take Cognizance of few Matters that may be determined by the known Laws, and ordinary Courts of Judicature: They only intermeddle in Matters of Complaint and sudden Emergencies, their constant Business being to consult for the publick Good, Honour



Honour and Welfare of the Realm in Affairs of State. 4 Inst. 53.

The Lords and Commons assembled in Parliament, have oftentimes transmitted Matters of high Concern to the King and his Privy Council; the King with the Advice of his Council, publishes Proclamations binding to the Subject, but they are to be consonant to, and in Execution of the Laws of the Land.

The King sits himself in Council at his Pleasure; and appoints Privy Counsellors without Patent, by putting them on the List, and on their Removal, striking them out, which he may do as he pleases: They take an Oath to the King, justly to advise him, keep Secrecy, &c. Their Number at their first Institution was twelve, or thereabouts, but at this Time without Limitation, at the King's Will: There is a President of the Council, whose Office is very ancient, for *John Bishop of Norwich*, was President of the Council, *Anno 7. Regis Johannis*.

A Lord of Parliament takes not any Place of Precedency in regard to his being a Privy Counsellor: But a Member of the Privy Council, not being a Peer, but a Gentleman, shall have Precedence of all Knights, Baronets, &c.

In all Debates, the lowest delivers his Opinion first, and the King declares his Judgment last of all, and thereby the Matter of Debate determines.

My next particular Head, is *Magnum Concilium*, applied to the Upper House of Parliament; and sometimes out of Parliament-Time to the Peers of the Realm, Lords of Parliament; who are called *Magnum concilium Regis*. *Braët. lib. 1. c. 2. Co. Litt. 110.*

For the Origine of Parliaments, Sir *Henry Spelman* in his *Glossary* tells us, That in the Reign of *William the First*, Tenants in *Capite* were most of those

those that composed the great Assembly; and that Parliamentary Barons were created by the King's Writ out of those of good Possessions, whereby William reserved to himself a Tenure in Chief by Knights Service. These were Judges of the supreme Judicature; but the Original of the House of Peers for transcendent Power, does not seem plainly to appear till the Reign of Henry the Third; when Special Writs of Summons went out to the Optimacy distinctly by themselves. Camden.

The Peers in Parliament have been always summoned by the King's Writ, a Precedent whereof follows.

**C**AROLUS, &c. Charissimo consanguineo suo A. Comit. B. salutem. Quia Advisamento & assensu consilii nostri pro quibusdam arduis urgentibus negotiis nos, Statum & Defensionem Regni nostri Angliæ & Ecclesiæ Anglicanæ concernent quoddam Parliamentum nostrum apud Civitatem nostram Westmonasterium die, &c. prox. futur' teneri ordinavimus & ibid. vobiscum ac cum prælat' magnatibus & proceribus dict' Regni nostri colloquium habere, tractare, vobis sub fide & ligeanciis quibus nobis tenemini firmiter injungend' Mandamus quod considerat' dictorum negotiorum arduitate & periculis imminentibus cessante excusatione quacunque dict' die & loco personaliter intersitis nobiscum, ac cum prælatis magnatibus & proceribus prædictis super dictis negotiis tractatur' vestrumque consilium impensur' & hoc sicut Nos & bonorem nostrum ac Salvationem & Defensionem Regni & Ecclesiæ prædictorum expeditionemque dictorum negotiorum diligitis nullatenus omittatis. Teste me ipso apud Westmonasterium die, &c.

On the Day appointed by the King for the Sitting of the Parliament (Notice of which is given  
H by

by Proclamation) his Majesty usually repairs to the Parliament-House in his Coach of State, attended by all the Lords Spiritual and Temporal in their Parliament Robes: And if the King be indisposed, or for other important Reasons declines coming to the House, his Majesty may under his Great Seal, assign two or three of the Lords in Parliament to represent him.

The Lords being assembled (the manner of placing of whom, and their Precedency, I have already treated in describing the Glory of his Majesty in the House of Peers, towards the Close of my first Chapter) the King sends for the Commons by the Gentleman-Usher of the Black Rod, and the Commons forthwith attending his Majesty in the House of Lords, are by the Lord Chancellor or Keeper, in the King's Name, required to chuse them a Speaker, whereupon they return to their House, and having made a Choice, present him to the King; and after he is approved, the King, or the Lord Chancellor by his direction, makes a Speech to both Houses, setting forth the Occasion of their Meeting, &c. and then the Parliament is begun.

In their dispatch of Business, all the Peers of Parliament shall sit; and none stand, but when he speaks, that all present may hear him. The youngest Bishop reads Prayers; which being ended, the Clerk of the House reads the Bill's; those being read, he that will rises from his Seat and speaks for or against the Bill proposed, but no Lord or Commoner may speak twice to one Bill in one Day; that done, they proceed to another, and so another Bill. After a Bill has been once or twice read, with Amendments made, the Chancellor asks if they will have it engrossed, *viz.* put in Parchment, which being agreed to, it is read the third Time,

and

and if any Objections be then made against it, the Lord Chancellor asks if they will go to the Question, and if they agree to the Question, then he saith, "Here is such a Bill, the Purport whereof is so and so, which has been thrice read in this House, are ye content that it be enacted into a Law or no?" If the Non-contents are most, then the Bill is dash'd, and goes no farther; but if the Contents be superior in Number, then the Clerk writes underneath, *Soit Baile aux Communes.*

The Lords give their Assent and Dissent each Man severally, and by himself; first for himself, and then for another as Proxy, if he be deputed for that Purpose: And the dissenting Lords usually enter a Protest, (in Matters of Importance) setting forth the Reasons of such their Dissent; when this is over, that the Bill is sent down by the Lords to the Commons, it is commonly done by some of the Masters in Chancery, or other Persons whose Place is on the Wool-sacks, and they coming up to the Speaker, and bowing thrice, deliver to him the Bill, having read the Title, and desire that it may be there consider'd of and enacted; if afterwards it pass the House, then it is written on the Back, *Les Communes ont Assentez.*

If a Bill be pass'd in one House, but a Demur happens upon it, when sent to the other House, in this case a Conference is demanded for certain deputed Members of each House to meet in the Painted Chamber, and debate the Matter: The Lords sit cover'd at a Table, but the Commons stand bare, during their Conference, which if they agree not in, the Business is null'd; but if they acquiesce, the Bill with all others pass'd both Houses, are brought to the King in the House of Lords, where having his Crown on his Head, and



his Royal Robes, he gives his Royal Assent, which is pronounced by the Clerk of the Parliament, pursuant to his Majesty's Instructions. If it be a publick Bill, the Answer is, *Le Roy le Veut*; if a private Bill, *Soit fait comme'il est Desire*; if a Bill for Moneys given his Majesty, then the Answer is, *Le Roy remercie ses loyaux sujets, accepte leur Bénévolence, & aussi le veut.* And if the King likes not the Bill, his Denial is in these Words, *Le Roy se aviserá.*

It is worthy Observation, That a Bill for the King's General Pardon, has but one Reading in either House, for both Houses of Parliament are oblig'd to take it as the King pleases to give it. And at the giving of the Royal Assent to Bills, it is not requisite the King should be present in Person; for by his Letters Patents under his Great Seal, signed by his Hand, and notified to the Lords, it may be done by Commission to some of the Peers. 33 Hen. 8.

The Adjournments in the Lords House, are usually made by the Lord Chancellor, or Keeper, in the King's Name, to what Day the King pleases, in order to a Recess of Time, but otherwise each House may adjourn themselves: And when the King's Pleasure is to prorogue or dissolve the Parliament, his Majesty commonly comes in Person with his Crown on his Head, sends the Black Rod for all the House of Commons to come to the Bar of the Lords House; and then the Lord Chancellor by the King's Special Command, declares the Prorogation or Dissolution; and a Prorogation is commonly attended with a Speech from the Throne, in like Manner as the Parliament is open'd.

The Stat. 25 Car. 2. enacts, That Peers are to take the Oaths, and subscribe the Declaration against the Doctrine of Transubstantiation; not conforming

conforming to the Protestant Religion, and taking Oaths, are disabled to sit in Parliament, &c. 30 Car. 2. The Statute 13 H. 3. obliges Lords of Parliament, &c. to take the Oaths of Allegiance, Supremacy, and Abjuration, before any Affairs are transacted in the Parliament House; and if any such Peer, &c. vote, or make his Proxy, not having taken the said Oaths, he shall be adjudg'd a Popish Recusant, &c. and forfeit 500 l.

Peers in *Ireland* are to take the said Oaths before they vote, or sit there during any Debate. Peers of *Scotland* are also oblig'd to take the Oaths; and by the Articles of Union, made in the Reign of Queen *Anne*, sixteen Peers nominated by the Peers of *Scotland*, are to repair to the Parliament of *England*; (and forty-five Commoners are to be chosen by the Shires or Stewartries, as Representatives in the House of Commons.) The sixteen Peers are to be elected and summon'd by the Queen's Proclamation; and to have all Privileges of Parliament which the Peers of *England* have, &c.

The House of Lords have not only a Power, jointly with the King, for Making and Repealing of Laws, but also Judging in the Arraignment of any Peer of the Realm, Impeachments, &c. to examine into Corruption of Judges, and Magistrates, where Suits are delay'd, in Error, illegal Proceedings in other Courts, in Appeals from Decrees in Chancery, &c. And from this High-Court there lies no Appeal.

The Lords have in their House Power of Judicature, and so have both Houses together. *Co. Inst. 4 part, p. 23.* But if the King and the Lords assent that a Man shall be attainted and lose his Land, and it doth not appear that the Commons concurred, adjudg'd by all the Justices, That it is no Act of Parliament, and the Party shall be restor'd. 4 H. 7.

And a Writ of Error is allow'd to the Judgment of the Peers, as well as a Demur to the Jurisdiction of the Court. *Sir Robert Askins.*

In a Case in the House of Lords, relating to the Imprisonment of a Speaker of the House of Commons, the Lords referr'd the Matter to the Judges, who after mature Deliberation, insisted that they ought not to answer the Question, for that it had not at any Time been usual for the Justices to determine the Privilege of the High-Court of Parliament, which is so High in its Nature that it may make Laws, and that which is Law, make no Law, &c. That the Privilege was to be determin'd by the Lords of Parliament, and not by the Justices; tho' in Proceedings in the Lower Courts in such Cases, they deliver'd their Opinions. *Anno 31 H. 6.* But if a Writ of Error be brought in Parliament, upon a Judgment given in the King's Bench, the Lords (without the Commons) are to examine the Errors, by Advice and Counsel of the Judges, who are to inform them what the Law is, and to direct them in their Judgment; and if Judgment be reversed, then Commandment is to be given to the Lord Chancellor to do Execution accordingly; but if the Judgment be affirm'd, then the Court of King's Bench is to proceed to Execution. And the Lords are to proceed according to Law.

It has been held, That a Writ of Error lies not in Parliament 'till the King is petition'd for it, and he has sign'd the Petition. *22 Ed. 3.* And *Mich. 43 Eliz.* Resolv'd by all the Judges, That when a Decree is made in Chancery, the King upon Petition may refer it to the Judges, and none others: And the Lord Chancellor agreed to it. *Roll. Rep. 331.* Countess of *Southampton's* Case. But there are very few Precedents of this Kind; and it is admitted, That the Lords have Jurisdiction in

Writs of Error, and likewise in Appeals from Courts of Equity; an Appeal from a Decree in Equity, being of the same Nature with a Writ of Error at the Common Law. Sir *Robert Atkins*. And 'till the 1 *Hen. 4.* the House of Peers did exercise a Jurisdiction in Cases of Appeals for criminal Causes.

The Jurisdiction of redressing Grievances in Courts of Law and Equity, is solely in the House of Peers. And Members of the House of Commons are no more exempt than others from the Jurisdiction of the Lords, when they are concern'd in any Case. But the House of Lords may not commit a Member of the House of Commons for not appearing, for in such Case they will proceed to hear the Cause *ex parte*, and determine the same.

I am here methodically led to several adjudg'd Cases in the House of Lords, upon very nice Conjunctions; which sufficiently shew the Judicature of that House: And first in the Reign of King *Charles* the Second, soon after the Restoration, there was a notable Case in the House of Lords relating to *Thomas Skinner* Merchant, and the *East-India* Company: *Skinner's* Petition runs thus;

“ THAT in the Year 1657, private Trade  
“ being open in the *East-Indies*, the Pe-  
“ titioner set forth a Ship, that his Ship being ar-  
“ rived in the *Indies*, he possess'd himself of a  
“ Warehouse, purchas'd the Island *Barella*, and  
“ built him a House, &c. that the Company  
“ seiz'd his Ship, Goods, Houses, Island, &c. to  
“ above 17,000 *l.* Damage, used Violence to his  
“ Person, &c.”



“ That he had applied himself to his Majesty,  
 “ who refer’d the Case to the Lords of the Privy  
 “ Council, but that the Company could not be  
 “ brought to Justice; that his Case not being re-  
 “ mediable by the Courts below, he was oblig’d to  
 “ address himself to their Lordships, as the Su-  
 “ preme Court of Judicature, &c. that he had  
 “ been delay’d; pray’d their Lordships would  
 “ cause the Governor and Company to answer by  
 “ a Day; and that he might receive such Relief  
 “ as was consistent with Justice and Equity.”

The Lords ordered the Company to put in their Answer; and they brought in a Plea by way of Protestation, that all Injuries supposed to be committed by them, &c. were untrue; that the Petition was in Nature of an original Complaint, not brought by Way of an Appeal, &c. that Remedy may be given in the ordinary Courts where they have a Right to be tried, &c. The Lords receiving this Plea consulted the Judges, who gave their Opinions, that the dispossessing *Skinner* of his House and Island was not relievable in any Court of Law, but that taking away the Ship and Goods was.

While the Business was under the Consideration of a Committee of the House of Lords, the *East-India* Company presented a Petition to the House of Commons, reflecting on the Lords, and praying Relief. The Lords voted the Petition to be a scandalous Libel against the House of Peers: And gave Judgment, That the Governor and Company should pay *Skinner* 5000 *l.* Damages.

But the House of Commons own’d the Cause of the *East-India* Company, blam’d the Lords, and voted, That their Proceedings were not agreeable to the Laws of the Land: This very much surprised

prized the Lords, who voted, That the Commons had made an unexampled Breach of the Privileges of the House of Peers in entertaining the scandalous Petition; that their Proceedings were agreeable to Law, and warranted by many Precedents.

Upon this, Conferences past between both Houses, and Precedents on both Sides were produc'd: The Lords took Notice of the unusual Proceedings of the Commons, to censure by Vote their Transactions, which they could not legally do, because they were not a Court of Judicature, in any Case, much less of the House of Peers; that until *Henry the Eighth's* Time, the House of Commons was beholden to the Lords for their Administration of Justice, even concerning their Members and Privileges; and that themselves could not before that have punish'd any one that had offended them.

And the Lords in Answer to Precedents of the Commons, signified, That if one Merchant do an Act prejudicial to another, or a Company, they are to complain to the King, who will command him Home and punish him, or give them leave to right themselves. But that the *East-India* Company should do it themselves in their own Case, as they did, was against all Justice; and that the censuring of the Company for Wrongs and Misdemeanors to *Skinner* was just, and adjudging Reparation consonant to Law.

In a Writ of Error brought in the House of Lords, on a Judgment in the Exchequer for Slander: The Words were, *That a Man was Disaffected to the King*, by reason whereof he was injur'd in his Reputation; fell under the Displeasure of his Majesty, and lost his Office, &c. This being pleaded, it was answer'd by the Plaintiff's Counsel in the Writ of Error, That the Words, *Disaffected to the Government*, were

were not actionable; that if these Words were allow'd to be actionable, *Whig* and *Tory* in their common Discourse might daily claim it, whereby every Thing would be Cause of Action, &c. And upon Debate the Judgment was revers'd. *Dural* vers. *Price*.

In an Appeal from a Decree in the Court of Chancery. A Gentleman having Intentions of making his Addresses to a Lady of great Fortune, in Consideration of promoting his Designs of Marriage, entred into Bond to another in 1000*l*. Penalty, to pay him 500*l*. in ten Days after the Marriage consummated: The Nuptials were celebrated, and the Principal, Interest and Costs decreed to be paid. It was argu'd on behalf of the Appellants, that such Bonds tend to the betraying Persons of Quality, occasion unhappy Marriages, ruin Families, &c. that Marriages should be promoted by Mediation of Friends, not Hirelings, &c. To this it was answer'd, That the Consideration of the Bond was lawful, that Assistance was given, that the Persons were both of great Quality, and there was no Deceit, that there was a great Fortune to be acquir'd, &c. But the Decree was revers'd. The Case of *Tho. Thynne*, Esq; on his Marriage with the Lady *Ogle*.

Appeal in the House of Lords from a Decree in Chancery. A Man and his Wife, who was Sister of the half Blood to another Person, claim'd an equal Share with others who were Brother and Sister of the whole Blood to the deceas'd, of his personal Estate, and a Decree was obtain'd in their Favour. It was argued for the Appellants, That the half Blood ought to have but a half Share, and that in Cases of Inheritance the whole Blood was preferr'd; that every Man was suppos'd to Favour his next of Kin, &c. On the other Side

Side it was argu'd, That the half Blood is as near of Kin to the Intestate as the whole Blood, and ought to have an equal Share; that a Brother of the half Blood was as much a Brother as one of the whole; in the same Relation there can be no Difference or Degree, with respect to personal Estate, &c. and several Precedents were produc'd, whereupon the Decree was confirm'd. *Watts & al. vers. Crooke.*

Appeal from a Decree of Dismission in Chancery. A Nobleman made his Will, and devised Lands, &c. to another, and his Heirs-male with Remainders over, &c. And afterwards the said Nobleman convey'd the said Estate to other Persons, and their Heirs, by Lease and Release, (on a Marriage intended) to the Use of him and his Heirs, with Trusts for his Wife, as to Part, and the rest to be sold for Payment of Debts, funeral Expences, &c. but died before Marriage, and without Issue. The Appellant exhibited a Bill to have the Deeds of Lease and Release set aside, and the Will executed, but the Court gave no Relief. It was argu'd with the Appeal, That the Dismission was erroneous, there being Cause for Relief, for that the Marriage never did take Effect, that the Will was the Result of the Earl's continu'd Intentions, and the Deeds only the Effect of some sudden Fancy or Passion, that there was a Kindness to the last with the Person in whose Favour the Will was made; that it was a meer equitable Estate, and was intended only in Case the Marriage had been consummated, &c. and pray'd, That the Dismission should be revers'd. On the other Side it was answer'd, That the Deed of Release was a Revocation of the Will, that it alter'd the Estate; that both Will and Deed were voluntary and inconsistent, and therefore the Latter must stand; that tho' it was an equitable



equitable Interest, it ought to follow the Rules of Law; that the Release was made for Payment of Debts, as well as in Consideration of Marriage; that there was a manifest Change of Intentions; and tho' the Earl's Intentions were once to support the Honour with the Estate, yet it was always in his Power to alter it; there needs no Consideration to warrant the Revocation of a Will, &c. And therefore it was pray'd, That the Decree of Dismission might be affirm'd, and it was affirm'd accordingly. *Earl of Lincoln, ver. Roll, &c. ap.*

I shall conclude these Cases with the Report of several memorable Passages concerning a Bill for Restitution in Blood of a certain Lord, (as I am next proceeding to Trial of Peers) sent down by the Lords to the House of Commons in the 18th Year of Queen *Elizabeth*.

A noble Lord, whose Father was attainted of Murder, obtaining a Bill to be sign'd and ingross'd in the House of Peers, for Restoring of his Blood, the same pass'd that House, and was sent down to the Commons.

The Bill in the House of Commons was committed, and the Committees thought fit to add a Proviso to bar the young Lord from taking Advantage of any Errors in Fines, or other Conveyances made by his Ancestors; but in that Case he should be as though his Blood were not restored.

Upon this the young Nobleman procur'd a Message from the Lords to the Commons, That the Bill might pass as the Queen had sign'd it without any Addition, which they were of Opinion could not be made without the Consent of her Majesty: But the Commons were displeas'd at this Message from the Lords, and resolv'd to proceed as they had begun.

The

The next Day the Lords desired a Conference with the Commons; but they gave the Bill a third Reading, and sent it up to the Lords with the Proviso annex'd. This gave great Occasion of Resentment to the Lords, who having a Conference with the Commons, told them that they very much mislik'd their Proceedings, that they look'd upon themselves to be greatly touch'd in Honour, &c. and requir'd to know what Reasons had induc'd them to those Measures.

The Commons hereupon thought their Liberties infring'd upon in three Points; one, That they might not alter or add to any Bill sign'd by the Queen; another, That any Conference should be expected, the Bill remaining with them, unless they desir'd it; and the third, To yield a Reason why they pass'd a Bill in that Manner. An Answer was return'd the Lords very much to that Effect; and further, That as to the Bill's being sign'd by her Majesty, they look'd upon such Signature to be only a Recommendation of the Cause to both Houses, the House being not thereby concluded, but that they might alter or add any Thing they thought fit; that the Proviso they had made on good Consideration, and upon sufficient Reasons: But desir'd to be excus'd for not revealing those Reasons, which would be yielding an Account of the Proceedings of their House, and prejudicial to their Privileges.

This Answer being over, the Lords still press'd the Committees to shew Cause why the House added the Proviso; to which they answer'd, They had Authority to say nothing further to their Lordships; whereupon the Assembly brake up, and the Bill pass'd no further, the Lords not liking the Proviso, nor the Commons agreeing to withdraw it.

Now

Now I come to Trials of Peers in criminal Matters: And herein I have first to observe, That upon the Trial of any Nobleman for Treason, &c. all the Peers who have a Right to sit and vote in Parliament, are to be duly summoned twenty Days, at least, before such Trial, to appear and vote at the same, every such Peer first taking the Oaths required by the Act 1 W. & M. &c.

A Peer of the Realm for Treason or Felony, must be indicted before Commissioners of Oyer and Terminer, or in the King's Bench, if the Treason, &c. be committed in the County of *Middlesex*. When he is indicted, the King by Commission under the Great-Seal, constitutes some Peer (usually the Lord Chancellor) Lord High Steward, who is Judge in these Cases; and the Commission commands the Peers of the Realm to be attendant on him, and the Lieutenant of the *Tower* with the Prisoner, &c.

A *Certiorari* is awarded out of the Chancery to remove the Indictment before the Lord High Steward: Another Writ issues out of the Chancery for the bringing of the Prisoner, and the Lord Steward makes a Precept not only for that Purpose, assigning a Day and Place (which is commonly in *Westminster-Hall*, magnificently enclosed with Scaffolds) but also for summoning the Peers, which are to be twelve or above present.

At the Day the Lord Steward takes Place under a Cloth of State; his Commission is read by the Clerk of the Crown, and he has a white Rod deliver'd him by the Usher, which being return'd, after Proclamation made, Command is given for Cerrifying of Indictments, &c. the Lieutenant of the *Tower* to return his Writ, and bring the Prisoner to the Bar; this being done, the Serjeant at

Arms returns his Precept with Names of the Peers summon'd, they are call'd over, and answering to their Names, are recorded when they take their Places.

The Ceremony being thus adjusted, the High Steward declares to the Prisoner at the Bar, the Cause of their Assembly, assures him of Justice, and encourages him to answer without fear; then the Clerk of the Crown reads the Indictment, and arraigns the Prisoner, and the High Steward gives his Charge to the Peers.

This being over, the King's Counsel produce their Evidence for the King. And if the Prisoner have any Matter of Law to plead, he shall be assign'd Counsel; but if he pleads Not guilty, and has nothing further, he can have no Counsel assign'd him, for the Court are instead of a Counsel, and any Person present may inform the Court for the Benefit of the Prisoner.

After all the Evidence given for the King, and the Prisoner's Answer heard, then is the Prisoner withdrawn from the Bar, and the Lords that are Triers of the Prisoner go to some Place to consider of their Evidence: But the Lords can admit no Evidence but in Hearing of the Prisoner; they cannot have Conference with the Judges (who are Attendant on the Lord High Steward, and are not to deliver their Opinions beforehand) but in the Prisoner's Hearing; nor can they send for the Opinion of the Judges, or demand it, but in open Court: The Lord High Steward cannot collect the Evidence, or confer with the Lords, but in the Presence of the Prisoner; who is at first to require Justice of the Lords, and that no Question or Conference be had but in his Presence.

Nothing



Nothing is done in the Absence of the Prisoner, until the Lords come to agree on their Verdict, and then they are to continue together, as Juries do, until they are agreed, when they all come again into Court and take their Places, and then the Lord High Steward publickly, in open Court, demands of the Lords, beginning with the puisne Lord, Whether the Prisoner, calling him by his Name, be guilty of the Treason, &c. whereof he is arraign'd, who all give in their Verdict.

This is all done in the Prisoner's Absence, and he being found guilty is brought to the Bar again; and then the Lord Steward, acquainting the Prisoner with the Verdict of his Peers, gives Judgment accordingly.

And when the Service is perform'd, then is an Oyes made for the Dissolving of the Commission, and the white Rod broken by the Lord Steward; upon which breaks up this Grand Assembly, which is the most Solemn and August Court of Justice upon Earth.

The Sentence against a Peer, in case of Treason, is the same as against a common Subject, tho' the King forgives all but Beheading. This is a Part of the Judgment. For other capital Crimes Beheading is likewise the general Punishment of a Peer: But 33 H. 8. the Lord *Dacres* was attainted of Murder, and had Judgment to be hang'd, and was hang'd accordingly. 3 & 4 Ph. & M. the Lord *Stourton* was attainted of Murder, and had Judgment to be hang'd by the Neck until he was dead, which Sentence was executed. And if Execution be not done, the Lord High Steward may by Precept command it to be done according to the Judgment. *Co. Inst.* 3 part, 31.

By the Attainder of a Nobleman, the Blood is immediately corrupted, so that he and his Posterity are made ignoble, and cannot be restored but by Act of Parliament. *Co. Inst. 2 Part, 48. Stand. lib. 3. c. 34.*

A Peer of the Realm may be arraigned in Parliament, but he must be tried before a Lord Steward; and if he appear not, he shall be outlawed. Noble Women in the Eye of the Law, are Peers of the Realm, and are to be tried by their Peers. *Co. Inst. 2 Part, fo. 50.* But Noblemen of France, Ireland, &c. Sons of Dukes, Marquesses, Earls, &c. who are Noble, and have the Title of Lords, but are not Lords of Parliament, shall be tried by Knights, Esquires, or other Commoners, as Persons under the Degree of Peerage.

And every Lord of Parliament, called there by the King's Writ, shall not be tried by his Peers; but only such as sit there *Ratione Nobilitatis*, as Dukes, Marquesses, Earls, &c. and not such as are Lords of Parliament by reason of their Baronies which they hold in Right of the Church, such as Archbishops and Bishops, *3 Part, Co. Inst. pag. 30.*

And though the Archbishop of *Canterbury*, for the Honour of Religion is esteemed the first Peer of *England*, and to precede all Dukes; though Bishops pass Sentence alone in their own Courts, and send out Writs in their own Name, and not in the King's Name, as all the King's Courts do; Notwithstanding the Bishop of *Durham* has been a Count *Palatine* near 700 Years, and the Bishop of *Winchester* was in former Times reputed Earl of *Southampton*, yet have they not any Jurisdiction in Capital Matters in the House of Peers: But in Civil Trials where any Bishop is Plaintiff or Defendant,

he may as well as any Lay Lord challenge the Array, if one Knight at least be not returned on the Jury.

Our Prelates have an extensive Power in their Ecclesiastical Courts, particularly relating to the Government of the Church, in Visitations, punishing Offences, &c. And the Archbishop is styled, *Dei Gratia Archiepiscopus Cantuariensis*, and writes himself, *Divina Providentia*: But if there be any defect of Justice in the Courts of the Archbishop, the Party complaining may appeal to the King in his Court of Chancery, and upon such Appeal, a Commission under the Great Seal shall be directed to certain Persons particularly delegated for that Business; and from the highest Court of the Archbishop of *Canterbury*, Appeal lies to this Court of Delegates. 25 H. 8. And the Convocation for making Ecclesiastical Laws, are assembled by the King's Writ, and their Ordinances are to have the Royal Assent.

But to return to my Subject of Bishops having no Jurisdiction in Capital Cases, nor Right to Trial by Peers. Anno 17 Edw. 2. *Adam de Orleton*, Bishop of *Hereford*, was accused of Treason, for conspiring with *Roger Mortimer* Earl of *March*, and indicted at the King's Bench Bar, and a common Jury returned, who found him guilty, and his Goods and Lands were seized into the King's Hands, &c.

In the 30th of Edw. 3. the Bishop of *Ely* was indicted and tried by a common Jury, for several Felonies, and the Bishop had his Challenges to the Jury on his Trial: And this at a Time when the Clergy had engrossed all the Court Preferments into their Hands.

The

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The Bishop of *Carlisle*, in the Second Year of *Henry the Fourth*, was arraigned of Treason before Justices of *Oyer and Terminer*, and afterwards the Record was removed to the King's Bench, and the Bishop put into the Marshalsea, but being brought to the Bar he pleaded his Pardon.

But what is beyond these, in the 27th of *Henry the Eighth*, the Bishop of *Rocheſter* was indicted, arraign'd and tried by a common Jury, for speaking treasonable Words against an Act of Parliament, and was condemned at the King's Bench Bar, and executed.

These Cases make appear how Bishops in several Ages have been tried for Capital Offences, and that not by Peers; and to prove they have no Right to Trials of others in such Matters in the House of Peers, I shall only Instance, That in 15 *Ed. 2.* in the Judgment given against the *Spencers*, the Lords Spiritual withdrew.

In the Fourth of *Edward the Third*, on the Trial of the Earl of *March* for Treason, the King Commanded *Les Counts & Barons, Peers, &c.* to give Judgment, and not one Word of the Prelates.

*Anno 11 R. 2.* divers Matters of Treason were to be treated of, and several Lords to be tried, and therefore the Spiritual Lords absented themselves from the Parliament; but the Archbishop drew up a Protestation, that their Absence should not prejudice them of any Privilege, tho' at the same Time acknowledging they had no Right to be present in Cases of Blood. And the Plea of the Lords Spiritual for themselves, who would have it they have a Right is, That they never absented themselves when Capital Cases were debated, upon any other Account, than because they were prohibited



by the Laws of Holy Church, to consent to the Death of any Man; and accordingly they made their Protest, 11 R. 2. The Absence of Prelates is no Cause of reversing a Judgment. *Earl of Salisbury's Case.* 2 H. 3.

This is all I have to mention with relation to the Lords Spiritual, and their Privileges and Incapacities in the House of Lords, &c. I shall next take Notice of some extraordinary Cases of Trials of Peers, &c. and conclude this Chapter with the Dignity of Parliaments in the House of Lords and Commons, being consulted by the Kings of England, on making Peace and War, &c. from the Conquest down.

In the Reign of *William the Conqueror*, the *Earl of Hereford*, who under Colour of his Sister's Marriage near *Newmarket*, assembled many of the Nobility, and conspired with them to receive the *Danes* into England, and depose the Conqueror, was tried by his Peers, and found guilty of the Treason, *per Judicium parium suorum*, but he lived in Prison his whole Life. 2 Co. Inst. 50. This shews that Trial by Peers is a Practice very ancient.

The Duke of *Suffolk* Anno 28 H. 6. being accused of High Treason by the Commons, put himself upon the King's Grace, and not upon his Peers, and the King alone judg'd him to Banishment for five Years, but he sent for the Lord Chancellor, and all the Lords that were in Town to his Palace at *Westminster*, and also the Duke, and commanded him to absent himself in their Presence; and at the Desire of the King, the Lords entred a Protest to save the Liberty of their Peerage. This was esteemed no legal Banishment, for by the ordinary Course of the Common Law, there is no Punishment

ment by Banishment : And the Lords could not demand him, by reason he was not restrained from them. The King's Judging in that manner was no Judgment at all, he was extrajudicially bid absent himself out of the Kingdom, and in doing it he was taken on the Sea and slain.

The next Case which occurs within my Observation, is the Lord *Cromwell's*, in the Reign of King *Henry* the Eighth; this Lord was attainted in Parliament, and condemned and executed for High Treason, without being permitted to make any Defence. Great Persons were in this Reign brought to Trial before Lords Commissioners.

*Anno 1 Jac. 1.* Sir *Walter Raleigh* was attainted of Treason, and kept Prisoner in the Tower twelve Years; then the King gave him a Commission to go into *Guinea*, and Authority to execute Martial Law and Power over the Lives of other Persons: He went to *Guinea*, and upon his Return was committed again to the Tower, whereupon, at the Intercession of the *Spanish* Ambassador Count *Gundamora*, Sentence was passed upon him, and he was executed upon the Attainder. His Counsel insisted in his Defence, That his having Power by Commission over the Lives of other Men implied a Pardon, but the Court would allow no Pardon by Implication, and ruled that no Man could be pardoned but by express Words. 2 Cro. 49.

*Anno 32 Car. 2.* In the Case of the Lord Viscount *Stafford*, after the Evidence were over for the King, and the Prisoner had made his Defence, and summed up all his Objections to the King's Evidence, he insisted upon several Points of Law, *viz.* That there were no Precedents of Proceedings Criminal continuing from Parliament to Parliament; that no Overt-act was alledged in the Impeachment;

that they were not competent Witnesses who swore against him, but that they swore for Money; and whether a Man could be condemned for Treason by one Witness, there not being two Witnesses to any one Point, &c. To the first it was answered, That it was entred in their Books as the Law and Constitution of Parliaments, that Impeachments and judicial Proceedings continue from Parliament to Parliament; to the second, that there were Overt-acts in Proof; to the third, that if there were one Witness to prove one Overt-act at one Time, and another to prove an Overt-act at another Time, both relating to the same Treason, they were sufficient Witnesses. And as to the fourth, the hiring Witnesses to swear could be no Point of Law till the Fact proved, and that his Majesty's Bounty to his Witnesses was no Objection to their Testimony; so the Points insisted upon being overruled, he was found guilty by a Majority of twenty-four Votes, and was executed on *Tower-Hill*.

The only further Case I shall take Notice of is, Sir *John Fenwick's*, 8 W. 3. Sir *John* was indicted of High Treason on the Oaths of two Witnesses; but he having put off his Trial for a considerable Time, and being very much suspected to have by Bribery and other means prevailed upon one of the Evidences to withdraw himself, as on his Trial only one Witness could be produced against him; an Act was made for his Attainder and Conviction, and he was executed: But this Case was not to be drawn into Example.

I at length advance to my Conclusion of this Chapter, viz. to shew that the House of Lords and Commons have been consulted by our *British* Kings, on making Peace and War, &c. from the earliest of Times.

This

This will be manifested in the following Instances: In the Reign of King *John*, the Peers or Barons were summoned to Parliament, to give their Advice concerning a War of Defence with *France*, and at that Time the Commons were admitted.

The 49th of *Henry* the Third, a Parliament was called to advise with the King, *pro pace asseveranda & firmanda*, they are the Words; and where Advice is required, Consultation must be allowed.

A Parliament was called the 5th of *Edward* the First, and the King therein advised with his Lords and Commons, for the suppressing *Lluellin* Prince of *Wales*. And King *Edward* the Third summoned his Peers and Commoners in his first Year to have their Advice, Whether he should declare War or make Peace with the *Scots*. In the 17th Year of that King, his Passage into *France* was resolved: And in the 27th Year a great Counsel was held in Parliament for the Prosecution of the *French* Wars.

In the sixth Year of *Richard* the Second, a Parliament was called to consult about the Defence of the Borders, the King's Possessions beyond the Seas, *Ireland* and *Gascoign*, his Subjects in *Portugal*, &c. 13 R. 2. The Parliament was called for renewing the Truce with *France*: and 17th a Parliament is called to consult of a Treaty of Peace with *France*.

7 H. 4. the King advised with his Parliament relating to the Wars with *France*; in this, the Commons confer with the Lords, and make many Ordinances, to which the King assented. And in the 10th of *Henry* the Fifth, a Treaty of Peace with *France* was perused and ratified by the Lords and Commons.



In the 20th of *H. 6.* the Commons exhibit a Bill for Guard of the Seas; ordering a certain Number of Ships, &c. to which the King and Lords assented.

The great Monarch *Henry* the Eighth, who asserted the Supremacy in the Church, advised with his Parliament concerning a Course for resisting the *Scots*, how to acquit the Quarrel between him and the *Castiles*, for resisting the Pope, &c. *Parl. 3 H. 8.*

In the 18th Year of *James* the First, the Parliament advised the King relating to the making of War. In the Reign of King *Charles* the Second, the Parliament insisted upon being acquainted with what Alliances were made for prosecuting the War against *France*, before they granted any Supplies: The Parliament were consulted in the Wars of King *William*; and the Treaty of Peace concluded at *Utrecht* in the Reign of the late Queen, (as usually such Treaties have been) was laid before the Parliament.

## C H A P. III.

*Of the House of COMMONS; its Antiquity and Jurisdiction; the Laws of Elections; the Summons and Methods of calling and holding of Parliaments, passing of Bills, &c. of Committees, Privileges of Members; Speakers from the Beginning, and their Preferments, &c.*

THE Power and Authority of Parliament for making of Laws in proceeding by Bill, is so transcendent and absolute, as Sir Edward Coke observes in the 4th Part of his *Institutes*, that it cannot be confined either for Causes or Persons within any Bounds; and to whose unlimited Jurisdiction the learned Judge applies the Verse of *Virgil*.

*Hic ego nec metas rerum, nec tempora pono.*

The Parliament is the highest and most honourable Court of Justice in England; it is the *Dernier Resort*; It makes, enlarges, diminishes, abrogates, repeals, and revives Laws, Statutes, Acts and Ordinances concerning Matters Ecclesiastical, Capital, Criminal, Common, Civil, Martial, Maritime, &c. and no Law or Custom of England, can be taken away or adnull'd, but by Aunoriry of Parliament. *1 Co. Inst. 110.*

And

And some Authors have erroneously maintained, that the great Power of both Lords and Commons in Parliament, is exercised only by the King's Permission; that the Commons had no further Authority than what the King and the Lords admitted them. Sir *Robert Filmer* holds, That the Legislative Power rests solely in the King. Doctor *Heylin* denies the Parliament to be the Peoples Birth-right; but as my Lord *Coke* tells us, and every Person knows it, All Acts of Parliament must have the Consent of the Lords and Commons, and the Royal Assent, before they have the Force of a Law: And by these Acts the Authority of Parliaments is originally settled, besides the electing of Members, which is free by the People, from whom only they are first empowered to sit in the Parliament as their Representatives.

Mr. *Pryn* in his Sovereign Power of Parliaments, gives it as his Opinion, That the Laws to which the King assents, are more the Peoples than the King's: And that the King in passing of a Bill, doth but like a Minister in Marriage, declare it to be Law, but it is the Parties Consents which effect the Marriage, and the People only that make it a Law to bind them. And that the chief Legislative Power is in the People and Houses of Parliament, not the King. *Pryn* p. 47.

For the Original of the House of Commons, our Authors of Antiquity vary very much: Many are of Opinion, that the House of Commons began not to be admitted as a part of Parliament, until 49 H. 3. and their Reason for it is, That the first Writ of Summons of any Knights, Citizens and Burgeses now extant, is of no ancienter Date than that Time.

But the Great Charter in the 17th-Year of King *John*, (about which Time the distinction of Ba-

rones,

*rones majores & minores* is supposed to begin) appears to be made *per Regem, Barones, & liberos Homines totius Regni*; which is plain that it was not made by the King and Barons only; Mr. *Selden* in his *Titles of Honour*, fo. 709. The Borough of *St. Albans*, claim'd by Prescription in the Parliament, 8 *Edw.* 2. to send two Burgesses to all Parliaments, as in the Times of *Edw.* 1. and his Progenitors, which must be the Time of King *John* his Grandfather, and so before the Reign of *Henry* the Third. And in the Reign of *Henry* the Fifth, it was declared and admitted, that the Commons of the Land were ever a Part of the Parliament.

*Polydore Virgil, Hollinshead, Speed and Martin*, mention, That the Commons were first summoned at a Parliament at *Salisbury*, 16 *H.* 1. Sir *Walter Raleigh*, in his Treatise of the *Prerogative of Parliaments*, thinks it was *Anno* 18 *H.* 1. My Lord *Bacon*, in a Letter to the Duke of *Buckingham*, asks, Where were the Commons before *H.* 1.? which plainly implies his Opinion of their being a House of Commons at least at that Time. And Doctor *Heylin* finds another Beginning for them, *viz.* in the Reign of *Henry* the Second.

Mr. *Pryn* tells us, It is apparent from all the Precedents before the Conquest, that our primitive Synods and Councils, were nought else but Parliaments; that our Kings, Nobles, Senators, Aldermen, Wisemen, Knights and Commons were usually present and voting in them as Members and Judges. Sir *Henry Spelman, Camden*, and others, prove the Commons to be a part of the Parliament in the Time of the *Saxons*, though not by that Name, or elected, as consisting of Knights, Citizens and Burgesses.

*William* the Conqueror called several Parliaments, wherein it appears, that the Freemen or Commons



Commons of *England* were there, and had a Share in making of Laws. In the fourteenth Year of this King, at a general Council or Parliament held at *Westminster*, the King by his Charter confirmed the Liberties of the Church, and after he had subscribed his Name, he signed it with the Cross.

This King by settling the Court of Parliament, so established his Throne, that neither *Britain*, *Dane*, nor *Saxon*, could ever disturb his Tranquility, though a bold Attempt was made by his Brother *Robert*, but it proved successful. The making of his Laws were by Act of Parliament: The Marriage of his Daughter *Mauwde*, and the entailing of the Crown to her, were done by Act of Parliament; and the Accord between *Stephen* and him was made by Parliament; yet all the Times since have not kept the said Form of assembling the three Estates. *Dodderidge's Antiquity of Parliaments.*

The same Author says, There was a Parliament before there were any Barons, and if the Commons do not appear, there can be no Parliament, though all the great Peers of the Realm were present with the King; for the Knights, Citizens and Burgesses represent the whole Commons of *England*, but the Peers only are present for themselves and none others.

The King cannot take Notice of any Thing said to be done in the House of Commons, but by the Report of that House, and every Member of the House of Parliament has a judicial Place, and can be no Witness. *Co. 4 Part, 15.*

When King *Charles* the Second being in Person in the House of Commons, and sitting in the Speaker's Chair, ask'd the then Speaker, Whether certain Members, whom the King named, were then present? The Speaker from a Presence of Mind,

Mind, which arose from the Genius of that House, readily answered, That he had neither Eyes to see, nor Tongue to speak, but as the House was pleased to direct him! *Sir Robert Atkins's Jurisdiction and Antiquity of the House of Commons.*

*Parliaments*, it has been observable by the greatest of Men, have not succeeded well in five Cases, *viz.* When the Lords or Commons have been under the Displeasure of the King; when any of the great Lords have been at Variance amongst themselves; when there is not a good Understanding between the Lords and Commons; there is no Unity between the Commons themselves; and when no Preparation has been made for their Proceedings. *Co. 4 Part, 35.*

So essential is a good Understanding between the King and his Commons, that in former Times the Commons petitioned the King, That he would require the Archbishop and all his Clergy to pray for the Continuance of his Good-will towards them: The want of this Harmony, has in all Ages occasioned, not only very little to be transacted in the High Court of Parliament, but very ill Consequences; of which numerous Instances might be given, but I shall content my self with a View only of the Heats and Animosities in the Reign of King *Henry the Third.*

In this Reign by an industrious spreading of false Rumours, Scandal was so triumphant, that the most fatal Quarrelling ensued, sometimes between the King and his Commons, and other Times between the King and his Lords; and by private Discontentment, publick Discord was fomented, and even Majesty scandalized. 'Twas the more remarkable that these Animosities prevailed in 21 *H. 3.* when *Magna Charta* was confirmed; and at a Parliament held at *Oxford*, in the forty-second Year of that

that Reign, which last was called *Insanum Parliamentum*, by the Madness of their Proceedings: And these Contentions frequently grew to that height, as to break out in dreadful Wars and Rebellions. So that one should imagine it to be the Age of the Philosophical Poet, when he says,

*Impius hæc tam culta novalia miles habebit ?  
Barbarus hæc Segetes ? En quo discordia civis  
Perduxit Miseros !* —————

Virgil.

As Contentions between the Lords and Commons, have sometimes been the Cause of publick Commotions, so at other Times have the Proceedings of those Houses affected the rebellious Populace, particularly in Cases of Subsidy and Taxation.

For in the Reign of *Richard* the Second, on laying a new Subsidy upon the Subjects, called a *Poll-Tax*, to equip the Earl of *Buckingham* for his Expedition into *France*, a strong Rebellion ensued, wherein the Archbishop of *Canterbury*, (Lord Chancellor) the Lord Treasurer, and the Chief Justice of *England*, were barbarously murdered.

In the 4 *H. 7.* on granting a new Subsidy, a Rebellion was raised in the *North*, wherein the Earl of *Northumberland*, who was a Commissioner for levying that Subsidy, was by the Rebels cruelly slain.

And *Anno 16 H. 8.* a new Device for raising Money was set on Foot, to furnish the King in a Royal Voyage to *France*, which made the unthinking Multitude rise in Rebellion, but *Charles Brandon*, the Noble Duke of *Suffolk*, soon dispersed them.

The like has frequently happened on new Impositions, levied upon the Subject in other Nations, as *France, Spain, &c.* And this has occasioned (particularly 9 E. 3.) when a Motion has been made for a Subsidy to be granted of a new kind, that the Commons have desired a Conference with those of their several Counties and Places, whom they represented, before they have treated of any such Matters. *Co. 4 Part, 34.*

The Matters to be transacted in Parliament, relate to the King; the State of the Kingdom, the Defence of the Kingdom; the State of the Church of *England*, and the Defence of the same Church. *Rot. Parl. 9 H. 4.*

Before the Conquest, Parliaments were to be held twice every Year; King *Edward* the First, kept his Parliament once every two Years; and since it has been enacted, That a Parliament shall be holden once every Year.

But Cardinal *Wolsey*, the great Favourite of *Henry* the Eighth, expressed a Contempt and Hatred to Parliaments, and the Common Law, the only Supports of our Constitution; 'twas by his means that a Parliament was but once held in fourteen Years during that Reign, which was upon a very remarkable Occasion, *viz.* to attain the good Duke of *Buckingham*.

A Parliament cannot begin without the Presence of the King, either in Person, or by Representation: And by Representation two ways, either by a Guardian of *England* by Letters Patents under the Great Seal, when the King is out of the Realm, or by Commission to certain Noble Lords in Case of Indisposition, &c. when his Majesty is at Home. King *Henry* the Sixth sate in Parliament when he was not above five or six Years of Age.

If



If any Parliament is to be holden before a Guardian of the Realm, there must be a special Commission to begin the Parliament; but the *Teste* of the Writ of Summons is to be in the Guardian's Name.

Anno 5 H. 5. A Parliament was held before John Duke of Bedford, Brother to the King, and Guardian of England; and it was summoned under the *Teste* of the Guardian: And 8 H. 5. it was enacted, That if the King being beyond the Seas, cause a Parliament to be summoned in this Kingdom, by his Writ under the *Teste* of his Lieutenant, and after the King arrives in this Realm, the Parliament shall not be dissolved by such Arrival of the King, but shall proceed without any new Summons.

In the 3d of Edward the Fourth, a Parliament was begun in the Presence of the King, and prorogued to a further Day; and then William, Archbishop of York, the King's Commissary by Letters Patents, held the same Parliament, and made an Adjournment, &c. The Cause of the said Prorogation, and the Proceeding of the Archbishop, was a Rebellion in Gloucestershire, which the King was obliged to go in Person to reduce.

And 28 Eliz. the Queen by her Commission under the Great Seal, reciting that for urgent Occasions she could not be present in her Royal Person, did authorize John Whitgift Archbishop of Canterbury, William Baron of Burleigh, Lord Treasurer of England, and Henry Earl of Derby, Lord Steward, to hold a Parliament, &c. & ad faciendum omnia & singula, &c. necnon ad Parliamentum adjornand' & prorogand' &c. And in the upper part of the Page, above the beginning of the Commission is writen, Domina Regina representatur per Commissarios viz. &c. The Commissioners far on a

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Form before the Cloth of State, and after the Commission read, the Parliament proceeded.

The Summons of Parliament is by forty Days or above before the Sitting; and Parliaments are summoned by Advice of the Privy Council. 2 Part. Co. Inst. 157. Anno 1 W. & M. it was enacted, That the Lords Spiritual and Temporal, and Commons conven'd on the Abdication of King James the Second; were the two Houses of Parliament to all Intents and Purposes, notwithstanding the wanting of any Writ of Summons, &c. Stat. 1 W. & M. Sess. 1. c. 1.

By 6 W. & M. it was enacted, That no Parliament should continue longer than three Years; But by 1 Geo. the Time is enlarged to seven Years. The Summons or Writ of Election of Members of Parliament, is thus:

**R**EX Vic. N. salutem. Quia de advisamento & consensu consilii nostri quibusdam arduis & urgentibus negotiis nos Statum & Defensionem Regni nostri Angliæ & Ecclesiæ Anglicanæ concernent quoddam Parliamentum nostrum apud Civitatem nostram Westmonasterium die, &c. prox' futur' teneri ordinavimus & ibidem cum Prælati Magnatibus & Proceribus dicti Regni nostri colloquium habere & tractare tibi præcipimus firmiter injungentes quod facta proclamatione in prox' Com' tuo post receptionem hujus Brevis nostri tenend' die & loco prædicto, duos milites gladiis cinctos magis idoneos & discretos cum prædict' &c. Et Electionem illam in pleno Com' tuo factam distincte & aperte sub sigillo tuo & sigillis eorum qui Electioni illi interfuerunt, nobis in Cancellariam nostram ad dictum diem & locum Certificates indilate. Teste me ipso, &c.

K

There

There are Knights, Esquires, Gentlemen, Citizens and Burgeses, all under the Denomination of Commons of the Realm, as there are divers Degrees of Nobility comprehended under the Word *Peers*: The above Summons you may observe is for the electing Knights of the Shire; and every City and Borough are to chuse two Citizens and Burgeses.

Now I come to the Laws of Elections, which I shall take Notice of in their Order of Time. The first is 7 H. 4. This Statute enacts, That the Election of Knights of the Shire, shall be as follows, *viz.* At the next County-Court after the Delivery of the Writ, Proclamation is to be made of the Day and Place the Parliament is to assemble, and that all as are there present, shall attend to the Election of Knights of the Shire; and then in full County a free and indifferent Election shall be made. After such Choice, the Names of the Parties so chosen, are to be written in an Indenture under the Seals of the Electors, which Indenture so seal'd and tack'd to the Writ, shall be the Sheriff's Return thereof.

By 23 H. 6. it is enacted, That the Sheriff after Receipt of the Writ, shall deliver a Precept under his Seal, to every Mayor and Bailiff of Cities and Boroughs within his County, reciting the Writ, and commanding them to chuse two Citizens and Burgeses to come to the Parliament: And such Mayors and Head Officers are to make Return of the Precept to the Sheriff, by Indenture, &c. whereupon the Sheriff is enabled to make a good Return of the Writ. The Sheriff acting contrary to this Statute, or not returning a Member duly elected, is to forfeit 100 l. recoverable by Action of Debt: And Officers of Corporations, &c. making false Returns, are liable to a Penalty of 40 l. The Sheriff is to make Election

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Election between the Hours of eight and eleven in the Forenoon; and if any Knight, Citizen or Burgeſſ return'd by the Sheriff, be put out and another put in his ſtead, the Perſon ſo put in, if he take upon him to ſit in the Houſe, he ſhall forfeit 100 l. to the King, and the like Sum to the Perſon diſplaced.

The Statute 7 and 8 W. 3. declares, That if any Perſon ſhall return a Member to ſerve in Parliament, for any Place, contrary to the Determination in the Houſe of Commons of the Right of Election for ſuch Place, the Return ſo made, ſhall be adjudged a falſe Return: And the Party making it may be proſecuted, and double Damages with Coſts of Suit recovered againſt him. Officers wilfully and falſly returning more Perſons than are required to be choſen by the Writ or Precept, the like Remedy may be had againſt them. And all Contracts, Promiſes, Bonds, &c. given to return any Member to ſerve in Parliament, ſhall be adjudged void, and the Makers or Givers of ſuch Contracts, &c. of any Gift or Reward to procure a falſe or double Return, ſhall forfeit 300 l. one Third to the King, another to the Informer, and the Third to the Poor of the Place, to be recovered in any Court of Record at *Weſtmiſter*, &c.

When any new Parliament ſhall at any Time hereafter be called, there ſhall be forty Days between the *Teſte* and the Returns of the Writs of Summons; the Lord Chancellor, &c. is to iſſue out Writs for Election of Members of Parliament, with as much Expedition as may be, and the ſeveral Writs to be delivered to the proper Officer for Execution, who ſhall indorſe the Day of Receipt on the back of the Writ, and forthwith make out the Precepts to each Borough, &c. and within three Days, by himſelf or proper Agent, deliver ſuch Precepts to the Officers of every ſuch Borough, &c.



who are likewise to indorse the Day of Receipt, and immediately cause publick Notice to be given of the Time and Place of Election, and proceed to Election thereupon in eight Days.

For Electing of Knights of the Shire, the Sheriff is to hold his County-Court at the most publick and usual Place, and there proceed in the Election at the next Court, unless it fall out to be within six Days after the Receipt of the Writ, and then the same is to be adjourned, giving ten Days Notice of the Election. If the Election be not determined on View, but a Poll is demanded, the Sheriff is to take the same, nor can he deny a Scrutiny, and he or his Under-Sheriff shall appoint Clerks for that Purpose, who are to be sworn; the Freeholders are likewise to be sworn as to their Qualifications, before the Poll be taken, if the same is insisted upon by either of the Candidates. The County-Court is not to be adjourned to any other Place without the Consent of the Candidates, nor shall any unnecessary Adjournments be made, but the Poll to proceed; every Sheriff, Mayor, &c. is to deliver a Copy of the Poll to any Person desiring the same; and every Officer for every wilful Offence contrary to this Act, is to forfeit 500 l.

By the 10 and 11 W. 3. the Sheriff or other Officer having the Execution and Return of Writs of Summons for Parliament; on or before the Day of Meeting of such Parliament, and with all Expedition, not exceeding fourteen Days after Election, are to make Returns to the Clerk of the Crown in Chancery, to be filed, on pain of forfeiting 500 l. In taking the Poll the Sheriff, &c. shall enter the Place of the Elector's Freehold, and of his Abode, and the returning Officer within twenty Days after the Election, is to deliver over to the Clerk of the Peace, all the Poll-Books on Oath made before

two Justices, to be preserv'd amongst the Records of the Sessions of the Peace. 10 Ann. c. 22.

These are the Laws relating to Returns of Members of Parliament; and it may not be amiss to observe in this Place, That in Case of double Returns, it has been a general Practice in the House of Commons, that neither one nor the other should sit in the House, until it be decided or ordered: In the Reigns of Queen *Elizabeth*, and King *James* the First, sitting Members return'd by more Indentures than usual, were to withdraw, 'till the Committee for Privileges had further order'd it. Anno 1640. two Returns were made for *Great Marlow*, and in both Indentures *John Bur-lace*, Esq; was return'd; and upon Report from the Committee he was admitted to sit, but the other order'd to forbear 'till the Question was decided.

And in the same Year it was ordered upon a Motion, that where some are return'd by the Sheriff, or such other Officer, as in Law hath Power to return, and others by private Hands; in such Case those return'd by the Sheriff, or other Officer, should sit 'till the Election be quash'd by the House.

A Member elected and return'd for several Places, is to make his Choice for which Place he will serve; but if he doth it not by the Time which the House shall appoint, then it is said the House may appoint for what Place he shall continue a Member, and that Writs may go out for the other Places.

Next to the Manner of electing Members of Parliament, I shall enquire into the Persons whom the Law empowers to make Elections, the Management of the Persons to be elected, Qualifications, &c. and Privileges by Vertue of such Election,

Oaths, &c. before I advance to Proceedings in the House by Bill.

And first the Statute 8 H. 6. enacts, That the Election of Knights of the Shire shall be made by a Majority of Voices dwelling in the Counties, having each of them Lands or Tenements to the yearly Value of 40 s. besides Reprises: And he that cannot expend 40 s. *per Annum* shall have no Vote in the Election of Knights for the Parliament. And by the 10 H. 6. an Elector of Knights of the Shire must be resident, and have 40 s. *per Annum* Freehold, over and above Reprises in the same County.

This is all I find relating to Electors, in our Acts of Parliament, until the 7 & 8 W. 3. And by this Act every Freeholder, at the Request of the Candidates, is to take an Oath that he is a Freeholder of the County, and has freehold Lands, or Hereditaments, of the yearly Value of 40 s. lying at such a Place within the said County, and that he has not been before polled at the Election.

By this Statute no Person is to be admitted to Vote in any Election of a Member to serve in Parliament who is under the Age of one and twenty: And none shall be entitled to any Vote by reason of any Trust or Mortgage, unless the Trustee or Mortgagee be in actual Possession, or receive the Rents and Profits of the Estate; but the Mortgagor, or *Cestui que Trust* in Possession, shall and may vote for the same Estate. And all Conveyances of Lands, Tenements, &c. in order to multiply Votes, or split and divide the Interest in any Houses or Lands among several Persons to enable them to vote, shall be void and of none Effect.

By the Statute 10 Ann. no Person shall have a Voice for electing Knights of the Shire in Right of any Lands, who has not been charged or assessed

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to the publick Taxes, Church-Rates, and Parish-Duties, in such Proportion as other Lands and Tenements of 40 s. *per Annum* lying within the same Parish, and for which he shall not have receiv'd the Rents and Profits, or be entitl'd to have receiv'd the same to the full Value of 40 s. or more, to his own Use for one Year before such Election, unless such Lands or Tenements come by Discant, Marriage, Devise, Presentation to some Church, or Promotion to an Office, to which a Freehold is annex'd; the Person voting contrary shall forfeit 40 l.

And all Estates and Conveyances made to any Person in a fraudulent Manner, on Purpose to qualify him to vote, subject to Conditions to defeat or determine such Estate, or reconvey the same, shall be taken against the Persons executing the same as free and absolute; and all Bonds, &c. for Redemption shall be void. And Persons voting by Colour of such Conveyance, shall forfeit 40 l. No Officer of the Excise shall endeavour to dissuade any from giving his Vote for the Choice of any Person to be a Member in Parliament, on Pain of forfeiting 100 l. and Disability of executing any Office in the Government. 5 & 6 W. & M.

As to Persons elected; the Judges, who are Assistants in the House of Lords; and the Attorney General, are not eligible to be Members of the House of Commons. *Co. Inst. 4 part, 47, 48.* and 6 H. 4. the Parliament was summon'd by Writ, and by Colour of a certain Ordinance, it was forbidden that any Lawyers should be chosen, by reason whereof, my Lord Coke observes, this Parliament was fruitless, and had never a good Law made thereat.



By 12 W. 3. no Person who had any Office or Place of Profit under the King, or Pension from the Crown, was to serve as a Member in the House of Commons; and by a late Act, no Member of Parliament may enjoy an Office in the Government, and sit in the House at the same Time by Vertue of his former Election; for by the Acceptance of any Office his Election is void: But he may be elected again on a new Writ issued out, and sit in the House. Persons incapable of being elected, the Election to be void; and sitting or voting in the House to forfeit 500*l.* Stat. 4 & 5 Ann.

By ancient Statutes Knights of the Shire are to be resident in the County for which they are chosen, the Day of the Date of the Writ of Summons: And they are to be notable Knights of the same County, notable Esquires, or Gentlemen: And by a late Act, no Person shall be qualified to serve in Parliament as a Knight of the Shire, who hath not an Estate of Freehold, or Copyhold for Life, or some greater Estate to his own Use, of 600*l.* per Annum, over and above what will satisfy all Incumbrances; and a Citizen and Burgess 300*l.* per Ann. (of which Oath is to be made, at the Request of a Candidate, or two Persons having Right to vote) and if any Person shall be return'd not so seisd of such an Estate, the Return shall be void. 9 Ann.

No Person is capable of being elected a Member of Parliament who is not one and twenty Years of Age; and none shall be qualified by Vertue of any Mortgage, whereof the Equity of Redemption is in another, unless the Mortgagee shall have been in Possession seven Years before the Election. But the eldest Son of a Peer, or any Person qualified

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fied by the Act to serve as Knight of the Shire, shall not be incapable of being elected.

If any Person setting up for Member of Parliament, after the *Teste* of the Writ of Summons, or issuing out the Writs of Election, or after any Place of a Member becomes vacant, shall by himself, or any other Ways or Means on his Behalf, or at his Charge before his Election, directly or indirectly give, present, or allow to any Person or Persons, having Votes for such Election, any Money, Meat, Drink, Entertainment, or Provision, or make any Promise to give or allow any Money, or Present, or Reward, to or for any such Person or Persons, or for their Use, Benefit, &c. in order to be elected to serve in Parliament, every such Person shall be incapacitated to sit in the House upon such Election, be deem'd no Member, but be as if never return'd or elected. *Stat. 7 W. 3.*

This Statute is home as to Bribery; and in the eighth Year of Queen Elizabeth, one Mr. Long gave the Mayor of Westbury 4*l.* to be elected Burgeſs, and was thereupon elected: But this Matter being examin'd by the House of Commons, *secundum legem & consuetudinem Parliamenti*, the Mayor was fin'd and imprison'd; and Mr. Long was remov'd from the House, for corrupting the very Fountain it self, the Expression of Sir Edward Coke, 4 *Inst.* 23. But Sickneſs is no Cause to remove any Member of Parliament.

When a Man is chosen Member of Parliament, tho' it be only for a County, or particular Borough; yet when he is return'd and sits in Parliament, he serves for the whole Kingdom: And as Attendance of this Nature is for the Service of the Realm, for the Benefit of the King and his People, the whole Nation has such an Interest therein, that the King cannot grant an Exemption to any Person

son from being elected as a Knight, Citizen, or Burgess in Parliament, and because Elections ought to be free. *Citizens of York's Case, 29 H. 6.*

All Members of Parliament, that they may attend the Publick Service of their Country, are privileg'd with their menial Servants attending on their Persons, and all their necessary Goods, &c. from all Attachments, &c. for Debts, Trespasses, &c. all the Time they are on their Journey to the Place of Parliament, during the Time of the whole Sessions, and on their Way home again. But this Privilege does not extend to Breaches of the Peace, Felony, &c. for which a Member of Parliament, as well as any other Person, may be arrested.

The Persons of Ambassadors, and publick Ministers, and of their Servants and Dependants, are likewise privileg'd from Arrests; and Processes against them are adjudg'd void; the Persons suing forth Processes, their Attornies, &c. and the Officers executing the same, deem'd Violaters of the Laws of Nations, and to be punish'd as such: But no Merchant within the Description of any of the Statutes of Bankrupts, is to be protected by an Ambassador; neither shall an Ambassador's Servants be entitled to Privilege, unless their Names are registred in the Secretaries Office. *7 Ann. c. 12.* For the Function of Ambassadors, see an excellent Treatise wrote by Monsieur *Wiquesfort*, lately translated into *English*.

There are many remarkable Cases in our Books, treating of the Privileges of Parliament, relating to Arrests of Members of the House of Commons, and the Manner of their Confinement, Release-ment, &c. a few whereof I shall insert, to shew how far the Privileges of the Commons have from Time to Time been adjudg'd to extend.

The

The first is very extraordinary. *Anno 31 H. 6.* *Thomas Thorp*, Esq; Speaker of the House of Commons, and Chief Baron of the Exchequer, in an Interval of Parliament was arrested and convey'd to Prison, at the Suit of the Duke of *York*, who had obtain'd a Judgment against him in the Exchequer, upon an Action of Trespass, for carrying away the Duke's Goods from *Durham-House*; the Parliament meeting, the House of Commons send a Message to the King and Lords, complaining that their Speaker was a Prisoner, and praying his Release. The Duke of *York* gave the Lords an Account of his Transactions, and the Reasons inducing him to those Measures; whereupon the Lords assented, That the said *Thomas Thorp* should remain a Prisoner, notwithstanding his being Speaker of the House of Commons, or any Privilege of Parliament. And the Commons were requir'd, in the King's Name, to proceed to the Choice of another Speaker, which was submitted to, and they chose *Sir Thomas Charleton* in the Place of *Thomas Thorp*, Esq; who was approv'd by his Majesty.

The Judges did not give their Opinions in this Case; they desir'd to be excus'd; but said, " That in the Lower Courts, as Writs of *Superfedeas* of Parliament were brought to them concerning any Member of Parliament, who had been arrested, if it were not for Treason, Felony, Surety of the Peace, or for Condemnation before Parliament, they always released him, that he might freely attend the Parliament. "

In the thirty-ninth Year of *Henry the Sixth*, *Walter Clerk*, Esq; a Burgess for *Chippenham* in *Wilts*, being outlaw'd, was put in Prison; but he was soon releas'd from his Confinement. *Anno 14 Ed. 4.* *William Hide*, Esq; likewise a Burgess for *Chippenham*, was taken in Execution for Debt, and



and committed a Prisoner to the King's Bench Prison; but he was deliver'd by a Writ of Privilege issu'd out of Chancery, with this Saving, That his Creditors might renew their Execution after the Parliament.

Sir Thomas Shirley, a Member of the House of Commons, *1 Jac.* being arrested four Days before the Sitting of the Parliament, and carried Prisoner to the Fleet; a Warrant issued to the Clerk of the Crown for a *Habeas Corpus* to bring him to the House; and the Serjeant was sent for in Custody, who being brought to the Bar, and confessing his Fault, was excus'd for that Time. Upon hearing Counsel in the House at the Bar for Sir Thomas Shirley, and the Warden of the Fleet, and upon producing Precedents, Simpson the Prosecutor, who caus'd the Arrest to be made, was ordered to be committed to the Tower. And afterwards the Warden refusing to execute the Writ of *Habeas Corpus*, and the Delivery of Sir Thomas being denied, was likewise committed to the Tower. But on a new Warrant for a new Writ of *Habeas Corpus*, the Warden being again commanded by the House to execute it, on the Serjeant's bringing these Orders, the Warden agreed to deliver up Sir Thomas, and making his Submission to the House he was discharg'd.

This Affair taking up some Time, the House enter'd into several Debates touching their Privileges, and how the Debt of the Party might be satisfied: And thereupon there arose three Questions. First, Whether Sir Thomas Shirley should have Privilege? Whether presently, or to be deferr'd? And, Whether the House should petition the King for some Course for securing the Debt of the Party, according to former Precedents, and saving harmless the Warden of the Fleet? All which Questions were re-

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solv'd in the Affirmative, and a Bill drawn to secure *Simpson's Debt, &c.* which also produc'd a Bill for Relief of Plaintiffs in Writs of Execution, where the Defendants in such Writs are arrested, and set at Liberty by Privilege of Parliament.

This was a very memorable Case; but the Case of *George Ferrers, Esq;* Burgess for *Plimouth, 34 H. 8.* made much more Noise, and a greater Confusion than the preceding one of *Sir Thomas Shirley*. This Gentleman was arrested and put in the Compter: The House being inform'd of it, sent their Serjeant to demand their Member; who repairing to the Compter, in pursuance of his Orders, met with Resistance, the Top of his Mace was broken off, his Man knock'd down, and he glad to escape without his Prisoner: Coming back to the House, who were then sitting, and making his Complaint, both Lords and Commons adjudge the Contempt to be very great. The Commons then send for the Sheriff of *London*, the Clerks of the Compter, Officers, &c. and when they came, some of them were committed to the *Tower*, others to *Newgate*, where they continu'd until they were deliver'd on the Petition of the Lord Mayor.

Anno 1601. *Woodal*, a Servant to *William Cock, Esq;* a Member of Parliament, was arrested and imprison'd in *Newgate*; whereupon the Serjeant at Arms was presently sent to *Newgate* to bring him to the House, *Sedente Curia*, and being brought to the Bar with his Keeper, was discharg'd from his said Keeper, and his Imprisonment, by Order of the House.

Anno 19 Jac. 1. *Johnson*, a Servant to *Sir James Whitelock*, a Member of the House of Commons, was arrested upon an Execution by two Bailiffs, who being told *Sir James Whitelock* was a Parliament

ment-Man, one of them answer'd, "That he had  
 "known greater Mens Servants than Sir *James*  
 "*Whitelock's* taken from their Masters in Time of  
 "Parliament:" This appearing, the two Bailiffs  
 were sentenc'd to ask Pardon of the House and Sir  
*James Whitelock*, on their Knees; that they should  
 both ride upon one Horse bare-back'd Back to  
 Back, from *Westminster* to the *Exchange*, with Pa-  
 pers on their Breasts signifying their Crime; all  
 which was to be executed presently, *sedente*  
*Curia.*

And Members of Parliament, with their Ser-  
 vants, are not only privileged from Arrests, but  
 likewise in an extraordinary Manner from Assaults,  
 Menaces, &c. Sir *Robert Brandling* made an As-  
 sault upon Mr. *Wisherington*, a Member of the  
 House of Commons, in the Country before his  
 coming to the Parliament; and Sir *Robert* was  
 sent for up by the House, and committed to the  
 Tower.

In the Year 1640, it was insisted upon in the  
 House of Commons, and without Opposition,  
 That every Member of the House hath Privilege  
 for sixteen Days exclusive, and fifteen Days inclu-  
 sive, before and after every Parliament.

But by a late Statute, any Person may prosecute  
 any of the Knights, Citizens, and Burgeses of the  
 House of Commons, or their menial or other Ser-  
 vants, or any other Person intitled to the Privilege  
 of Parliament, in any of the Courts of Re-  
 cord at *Westminster*, or High Court of Chancery,  
 Court of Exchequer, or the Dutchy Court of  
*Lancaster*; and in all Causes matrimonial and  
 testamentary in the Court of Arches, &c. and in  
 all Courts of Appeal, at any Time from and im-  
 mediately after the Dissolution or Prorogation of  
 any Parliament, until a new Parliament shall  
 meet,

meet, or the same be re-assembled ; and from and immediately after any Adjournment of both Houses, for above the Space of fourteen Days, until both Houses shall meet or re-assemble ; and that the said Courts respectively shall and may after such Dissolution, Prorogation, or Adjournment, proceed to give Judgment, and to make final Orders, Decrees, and Sentences, and award Execution thereupon. 12 W. 3.

And if any Person or Persons have Cause of Action against any of the said Knights, Citizens, or Burgeses, or any other Person entitled to the Privilege of Parliament, after any Dissolution, Prorogation, or such Adjournment, as aforesaid ; or before any Sessions of Parliament, or Meeting of both Houses, as aforesaid, such Person or Persons shall and may prosecute such Knight, Citizen, or Burgess, or other Person entitled to Privilege in the Courts of King's Bench, Common Pleas, or Exchequer, by Original, Bill, and Summons, Attachment, and Distress Infinite thereupon, to be issued out of any of the said Courts of Record, which the said respective Courts are empower'd to issue against them, or any of them, until he or they shall enter a Common Appearance, or file Common Bail to the Plaintiff's Action, according to the Course of Proceeding in each respective Court. And for want of Appearance or Answer, &c. may proceed, and sequester the real and personal Estate of the Party, as in Case of a Peer beforemention'd, &c.

No Action, Suit, or Proceeding in Law or Equity, against the King's original and immediate Debtor, for a Duty immediately due, or against the King's Accountant for any Part of his Revenue, or other original and immediate Debt, shall be impeach'd or delay'd under Pretence of Privilege



lege of Parliament. But such Debtor being a Lord of Parliament, shall not be arrested upon such Proceedings; or being a Member of the House of Commons, shall not, during the Continuance of the Privilege of Parliament, be arrested upon such Process.

By the 10 Car. 2. Members of the House of Commons are to take the Oaths, and subscribe the Declaration, or be adjudg'd Popish Recusants Convict, and disabled to hold any Office, sit in the House, &c. The Places of Members disabled by this Act, declar'd void, and a new Writ to issue out of Chancery by Warrant from the Speaker, and Order of the House of Commons, for a new Election. The Houses of Parliament may at any Time cause all or any Members of their respective Houses to take the Oaths.

By the 1 W. & M. new Oaths were appointed. And the 13 W. 3. c. 6. enacts. That no Member of the House of Commons, &c. shall vote or sit in the House, during any Debate, after the Speaker is chosen, until such Member shall have taken the Oath to abjure the Pretender; which Oath is to be taken at the Table of the House, in a full House of Commons. If any such Member vote, not having taken and subscrib'd the said Oath, he shall be adjudg'd a Popish Recusant, disabled to sit in the House, to hold any Office, to sue in Law or Equity, to be Guardian, Executor, or Administrator, capable of a Legacy, or Deed of Gift, and shall forfeit 500 l. to him that will sue for the same. These Oaths are continu'd with Alterations, by several subsequent Acts in the late and present Reign.

The

*The Manner of Passing Bills; Orders, Rules;  
and Proceedings in the House of Commons.*

**A**S the House of Lords seems constituted for the Support of the Rights of the Crown, so the proper Province of the House of Commons is to stand for the Preservation of the People's Liberties.

The Commons in Making and Repealing of Laws have equal Power with the Lords; and for laying of Taxes on the Subject, the Bill is to begin in the House of Commons, because from thence the greatest Part of the Moneys arises, and 'tis they that represent the whole Commons of *England*; for which Reasons they will not permit any Alterations to be made by the Lords in a Bill concerning Money.

There are no Places of Precedency in the House of Commons as there are in the House of Lords; the Commons all sit promiscuously, only the Speaker has a Chair, or Seat, fix'd towards the upper End, in the middle of the House; and the Clerk, with his Assistant, sits near him at the Table, just below the Chair. The Members of the House of Commons never had any Robes, as the Lords ever had, except the Speaker and Clerks, who in the House wear Gowns, as Professors of the Law do during the Term-Time.

In Respect to the Choice of a Speaker, any Member of the House may move, That such a Person as he then names may take the Chair; which Motion being seconded by another Member, if no Opposition be made, the Person nominated is ceremoniously led from his Seat to the Bar of the House, and thence conducted by several

of the Members to the Chair; where being plac'd, he makes a short Speech, acknowledging the great Honour the House have done him in chusing him their Speaker, returns his Thanks, but modestly declares his Inability to perform so High a Trust; and requests, That the House would proceed to the Election of some more able Person.

This Speech being only Matter of Form, his Request is disapprov'd, and he submits himself to their Pleasure: But if a Contest happen about the Choice of a Speaker, on Motion made by some other Person, and seconded as before, it is determin'd by a Question, as in a Committee of the whole House, in which Case the Clerk of the House of Commons is to put the Question. After the Election is over by either of the Ways aforesaid, the Speaker takes Directions for his usual Request to be made at his appearing before the King; and when the House is sent for by the Usher of the Black Rod, the Commons repair to the House of Lords, and present their Speaker to his Majesty, by whom he is approv'd, and afterwards, having made a short Oration, he petitions that the Commons may have, during their Sitting, free Access to his Majesty, Freedom of Speech in their own House, and Freedom from Arrests; this being done, they return to the House, which concludes the Ceremony.

After the Speaker and Members have taken the Oaths, the standing Orders of the House are to be read, and grand Committees appointed to sit on the usual Days, viz. the Committees of Privileges and Elections, Religion, Grievances, Courts of Justice, and Trade. These are the standing Committees; but of late, tho' they are appointed by every new Parliament, they do not all of them act, only the Committee of Privileges; and this being

being not of the whole House, is first called in the Speaker's Chamber, from whence it is adjourned into the House, every one of the House having a Vote therein, tho' not named; which makes the same usually very numerous. And any Member may be present at any select Committee; but is not to vote unless he be named.

The Chairman of the Grand Committee is to sit in the Clerk's Place at the Table, and to write the Votes; if upon putting a Question, the Chairman deliver his Opinion that the *Yea's* have it, and any Member stand up and say, he believes the *No's* have it, the Committee is to divide within the House, the Chairman directing the *Yea's* to go to that side of the House, and the *No's* to the other, and then he is to appoint one of each to count the Numbers and report them: And if the Number be equal, the Chairman has a casting Voice, otherwise he has no Vote in the Committee. When the Committee has gone through the Matter referred to them, the Chairman puts the Question for reporting to the House; and if that be resolved, he leaves the Chair, and the Speaker being called to his Chair, (who quits it in the Beginning, and the Mace is laid under the Table) he retires to his usual Place, from whence (if he be not in the Seat next the Floor) he is to go down to the Bar, and so bring up his Report to the Table.

The most extraordinary Case which has occur'd in this Age, with relation to the Determinations of a Committee of Privileges and Elections, was the Case of *Ashby* and *White*; on a Question put, Whether an Action lies at Common Law for an Elector, who is denied his Vote? In this Case, the Lords *Cowper*, *Harcourt*, *Oxford*, and several other eminent Persons, then in the House of Commons, made excellent Speeches, and the Debates ended



in several Resolutions to the following Effect, *viz.* That the Qualification of Electors, and of Persons elected, is cognizable only before the Commons in Parliament, except in such Cases as are specially provided for by Statute ; That the examining and determining the Qualification or Right of any Elector, &c. belongs to them, where the Acts of Parliament give no particular Direction ; That whoever shall prosecute any Action, &c. which shall bring the Right of Electors, &c. to the Determination of any other Jurisdiction than that of the House of Commons, except in Cases provided for by some Statute, shall be guilty of a Breach of the Privilege of the House.

Forty Members are requisite to make a House for dispatch of Business ; and eight Persons make a Committee, which may be adjourned by five : But a Committee may not adjourn in any other manner than by putting a Question, That Leave be asked for the Committee to sit at another Time on that Business : When any Member in the House of Commons or Committee stands up to speak, he must be uncovered : While one is speaking, none else is to stand up until he have done speaking, and be sate down : And no Member in his Speeches in the House may mention the Name of any other Member then present, but to describe him by his Title, as that worthy Knight, &c. or by his Office, as the Gentleman of the long Robe ; or by his Place, as the Gentleman near the Chair, on the other side, &c. or thus, the Gentleman that spoke last, or last but one.

These Informations being preparatory to the Proceedings of the House, I thought fit first to insert them : And now I come to the manner of passing of Bills. Any Member of Parliament may move for a Bill to be brought in, except it be for imposing

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imposing a Tax, which is to be done by Order of the House; And being agreed to, the Person making the Motion, and those who second it, are ordered to prepare and bring in the same. When the Bill is ready, some of the Members ordered to prepare it, present it; and upon a Question being agreed to, it has the first Reading by the Clerk at the Table: After this the Clerk delivers the Bill to the Speaker, who standing up, declares the Substance of it, and if any Debate happen, he puts the Question, Whether the same shall have a second Reading? And sometimes upon Motion appoints a Day for it; for publick Bills are seldom read more than once in one Day, the Members being allowed convenient Time to consider of it; but we have some Instances of Bills being read twice and thrice in one Day, and passed, upon extraordinary Occasions; if nothing be said against a Bill, the ordinary Course is to proceed without a Question; but if the Bill be generally disliked, a Question is sometimes put, Whether the Bill shall be rejected? And if it be rejected, it cannot be any more proposed that Session.

When a Bill has been read the second Time, any Member may move to have the same amended, but he is to take all his Exceptions against it at one Time, no Member being admitted to speak but once in a Debate, unless the Bill be read more than once that Day, or the whole House be turn'd into a Committee, and in this last Case every Member may reply as often as he or the Chairman shall judge necessary. After some Time spent in Debates, the Speaker collecting the Sense of the House, reduces the same into a Question, which he propounds that the House may be kept to the Matter in Debate: This Question is submitted to the House, and it is put to the Vote; and every Que-

tion is to be put first in the Affirmative, viz. as many as are of Opinion that, &c. say, *Yea*. And then the Negative, as many as are of another Opinion say, *No*. If a Matter be received into Debate, and a Question arise, Whether the House shall proceed in that Debate at this Time? and the House is divided, in such Case the *No's* are to go forth; and if the Question be for an Adjournment of a Debate, the *Yea's* are to go forth.

A Question is to be put after the Bill is so read a second Time, Whether it shall be committed? Which is either to a Committee of the whole House, or a private Committee, as the Importance of the Bill shall require; this Committee is to meet in the Speaker's Chamber, and report their Opinion of the Bill with the Amendments to the House; and if there be Exceptions against the Amendments reported, which cannot conveniently be amended at the Table, then the Bill is to be recommitted: And here it may not be amiss to observe, that after the House has proceeded upon all the Amendments reported, sometimes other Amendments have been offered, as Proviso's, additional Clauses, &c.

But as to the Committee: The Chairman, when they proceed upon the Bill in order to their Report, first causes the Clerk attending to read the Bill, then reads it himself, putting every Clause to the Question, filling up Blanks and making Amendments; wherein he is determin'd by the Opinions of a Majority of the Committee: When the Committee have gone through the Bill, the Chairman by their Direction makes his Report at the Side Bar of the House, reading all the Alterations made, Clauses added, &c. and then delivers the same to the Clerk, who likewise reads all the Amendments, and the Speaker puts the Question whether they shall be read a second Time; and if that be agreed

to,

to, he reads the Amendments himself, and puts the Question, Whether the Bill so amended shall be engrossed, and read a third Time some other Day? And then the Speaker takes the Bill in his Hand, holds it up, and puts the last Question, *viz.* Whether the Bill shall pass? If a Majority of Voices are for it, then is written on the Bill by the Clerk, *Soit Baille aux Seigneurs.*

When the Bill has thus passed the Commons, it is sent to the Lords, attended with a certain Number of the Members of the House: As they approach the Lords Bar, the Member entrusted with the Bill makes three profound Bows, and addressing himself to the Lords, says, That the Commons have passed a Bill intituled, &c. to which they desire the Concurrence of your Lordships; and presents it to the Lord Chancellor, who comes down to the Bar of the House to receive it, and then withdraws.

After a Bill which is sent to the Commons from the Lords, has been twice read, the Question ought to be for the Commitment; if it be denied to be committed, it ought then to be read the third Time, and the next Question to be for its Passing, and not for the Ingrossing, as it is where the Bill originally begins in the lower House; for Bills sent by the Lords come always ingrossed: And upon a third reading of a Bill, any Member may speak against the whole Bill to throw out the same; or amend any Clause thereof, so as such Amendment be in few Words. But when a Bill is thrice read, and has passed the House, there ought to be no further Alteration, unless there be some apparent Mistake by false Writing, &c. in which Case the House upon Notice, has caused the same to be amended the Day following, and have again passed the Bill upon the Question. 25 *Eliz.* Popham Speaker.



The Speaker usually gives Notice the Day before of his Intentions in offering Bills to be passed, after they are ingrossed, to the End there may be a full House upon such an Occasion: And the 18th *Feb.* it was ordered, that no Bill be put to pass till nine of the Clock, and Notice to be given the Day before, that Bills shall be passed the next Day. And if it happen that two Bills are depending at the same Time, which have near Affinity, they have been sometimes joined after they have been twice read, and ordered by the House to be ingrossed, and passed.

Any Member, though he has spoken to the Matter, may rise up again and speak to the Orders of the House, if they are transgressed, and the Speaker omits taking Notice; but if the Speaker stands up, he is first to be heard, and the other must sit down till the Speaker has done. No Member is to be taken down, unless by Mr. Speaker, in such Cases as the House do not think fit to admit: If any Man speak not to the Matter in Question, the Speaker is to moderate; agreed for a Rule, *Anno* 1604. And if any Member speak impertinently or besides the Question in Hand, it stands with the Orders of the House for Mr. Speaker to interrupt him, and to know the Pleasure of the House whether he shall be further heard.

In the Year 1604. the following Orders were made with respect to Rules to be observed in the House. That when Mr. Speaker desires to speak, he ought to be heard without Interruption, if the House be silent, and not enter'd into Debate. That when the Speaker stands up, the Member standing up is to sit down. That if any Question be upon a Bill, the Speaker is to explain, but not to enter into Argument or Dispute. If two stand up to speak to a Bill, he that would speak against the Bill,  
if

if it be known, is to be first heard; otherwise he that was first up, which is to be determined by the Speaker: Whosoever hilles or disturbs any Person in his Speech, shall answer it at the Bar. And in going forth no Member to stir until Mr. Speaker rises from his Seat, and then all the rest to follow after.

It has been insisted on as a Rule, That a Question once made and carried in the Affirmative or Negative, cannot be again questioned, but must stand as the Judgment of the House. Amendments of Bills ought to be presently read three Times before they be put to Passage with the Bill: And the Speaker is not allowed to perswade or dissuade in passing of a Bill, but only to make a short Narrative; nor to vote, except the House be equally divided.

The manner of Voting in the House of Commons is by *Yea's* and *No's*; and if as they are all together it be difficult to determine which are the greater Number, then the House divides; and if the Question be to bring any Thing into the House, then the *Ay's* go out, but if it be relating to any Thing whereof the House is possessed, the *No's* go out: Four Tellers, two of each Opinion, are appointed by the Speaker, who after they have told those within, come to the Passage betwixt the Bar and Door of the House, and tell the others who went out; which being done, (the two Tellers that have the Majority taking the Right Hand) they advance to the Table and deliver their Numbers, saying, The *Ay's* that went out are so many, the *No's* that stayed in, so many; which the Speaker repeating, stands up and delivers the Majority.

If the Affirmatives are most Votes by the Judgment of the Speaker, or (in Case of Division) upon the Division, the Clerk is to enter the Vote, Resolv'd.

solv'd. If the Negatives, then he is to enter it thus: The Question being put (setting down the Words of the Question) it passed in the Negative.

Publick Bills are usually drawn by such of the House as are earnestly inclin'd to the effecting the Good of the Publick (particularly in relation to the Bill designed) with the Advice of Lawyers. And many Times upon Motion of the House a Committee is appointed, which is usual in Affairs of Importance. A Bill for Subsidies is generally drawn by some of the King's Counsel; and the Preamble contains the Causes of the Grant. Bills for Revival, Repeal, or Continuance of Statutes, are commonly penn'd by Lawyers, Members of the House, appointed for that Purpose; and private Bills are usually drawn by Counsellors at Law, not being of the House.

And in the Beginning of every Parliament, some Persons have been appointed to consider of such Laws as had Continuance to the present Session, whether they are fit to be continued or determined; as also of former Statutes repealed or discontinued, whether any are proper to be revived. And in respect to new Laws, Sir *Edward Coke* tells us, it is an Observation proved by an infinite number of Precedents, that whenever any good Bill has been preferred, or good Motion made in Parliament, whereof any Notice was taken in the Journals, though sometimes it has not succeeded at first, yet it has never died, but at one Time or other has taken Effect.

All Bills, Motions and Petitions are by Order of Parliament to be entred on the Parliament-Rolls, although they are denied and never proceeded to the Establishment of a Statute, together with the Answers: And whatsoever the Lords and the Commons agree upon, is an Ordinance presently, tho'

it be never ingrossed; or take not Effect as a Statute, till passed the Royal Assent.

In the Reign of *Richard* the Second, a Bill was exhibited to the Commons, against the great and excessive Charge of the King's Household: And the King telling the Lords, that the Commons had handled some Matters against his Royal Estate and Dignity, the Member of the House of Commons that exhibited the Bill, was condemned as a Traitor. But in the Reign of *Henry* the Fourth, it was otherwise.

*Anno 9 H. 4.* the Lords sent for certain of the Commons, and told them what Subsidy they thought fit to give the King, desir'd them to communicate it to their Companions, and advised them to condescend thereto; but they justly took Exceptions to the same, though it was declared that the Lords might debate of Subsidies by themselves.

King *Henry* the Eighth, on his asking Subsidies, and particularly the giving him the Monasteries, &c. declared by his Ministers, that no King or Kingdom could be safe but where the Monarch had three Abilities, *viz.* to live on his own Estate, and defend his Kingdom on any sudden Invasion or Insurrection; to assist his Confederates; and reward his well-deserving Servants: Which was agreed to by the Parliament.

A private Bill that concerns a particular Person, Corporation, &c. is not to be offered, till Leave of the House be obtain'd, and the Substance of it made known either by Motion or Petition: When such private Bill is brought into the House, such Person or Persons may be heard by themselves or Counsel at the Bar, if desired, or at a Committee to whom such Bill is referred. And in the Case of a Bill between the Earl of *Hertford* and Mr. *Seymour*,  
Counsel



Counsel was heard at the Bar, and the Earl of *Hertford* and the Lord *Henry Seymour*, were admitted to come within the Bar of the House, and to sit upon Stools with their Heads covered.

Petitions are usually offered by Members of the same County, after the manner of Bills, at the Bar of the House, and delivered at the Table; and if they concern private Persons, they are to be subscribed, and the Persons presenting them called upon to avow the Substance of the Petition, &c. especially if it be a Complaint against any Person.

When all Bills both publick and private, have passed the House of Lords and Commons, and the King is present to give the Royal Assent, the Speakers of both Houses have sometimes made short Speeches to his Majesty, thanking him for his great Care of the good Government of his People, in assembling them together to advise of such Things as are for the Welfare of the State, &c. which being answered with Acknowledgments of their Services, &c. and the King's Readiness to concur in their Proceedings, the Titles of the Acts are read, and his Majesty gives his Royal Assent. The Manner whereof, and of Adjourning, Proroguing, &c. See in the *Proceedings of the House of Lords*.

After the Royal Assent is given to an Act, it is the Prince's and whole Realm's Deed: The Determination of the High Court of Parliament being presum'd to be the Act of every particular Subject, who is either present Personally, or consenting by his Representative.

A Parliament may be held at any Place the King shall be pleased to assign: But it ought not to be dissolved as long as any Bill remains undiscussed; and publick Proclamation is to be made in the Parliament, That if any Person have any Petition, he shall come in and be heard; and if no Answer  
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be given, it is intended that the Publick are satisfied.

By a Prorogation of a Parliament in open Court, there is a Session; and every several Session of Parliament is in Law a several Parliament; but if it be only an Adjournment, then there is no Session, but only a Continuance, and Things shall remain in the same State as before. When a Parliament is called, and doth sit, but is dissolved without any Act passed, or Judgment given, it is no Session of Parliament, but a Convention. *Co. 4 Part, 27.*

In former Times, by the Death of the King during the sitting of the Parliament, the Parliament was *ipso facto* dissolved. But by 4 *Anne, c. 8.* it is enacted, That a Parliament sitting or in being, at the Demise of the King, shall continue for six Months.

The Business of the House is to be kept entirely a Secret amongst themselves: In the 23d of Queen *Elizabeth, Arthur Hall, Esq;* Member of Parliament, for publishing the Conferences of the House, and writing a Book which contained matter of Reproach against some particular Members, derogatory to the general Authority, Power and State of the House, and prejudicial to the Validity of the Proceedings, was upon Examination adjudged by the Commons to be committed to the *Tower* for six Months, Fined 500 *l.* and expelled the House.

But the Speaker of the House of Commons, according to the Duty of his Office, as Servant to the House, may publish such Proceedings, as he shall be ordered by the Commons assembled: And he cannot be liable for what he does that way by Command of others, and as their Minister, unless all those other Persons are liable. And Officers are not to disobey the Orders of the House of Commons,

mons, &c. the Case of *William Williams, Esq.* Speaker.

If any Member of either House speak Words of Offence, he is called to the Bar, where commonly on his Knees, he receives a Reprimand from the Speaker, and if the Offence be very great, he is sent to the *Tower*.

When the Bill of Attainder of the Earl of *Siraford* was passing the House, Mr. *Taylor*, a Member of Parliament, opposed it with great Violence and Indecency, and being heard to explain himself, was commanded to withdraw; whereupon after some Debate, it was resolved, he should be expelled the House, be made incapable of ever serving as a Member, and should forthwith be committed Prisoner to the *Tower*, there to remain during the Pleasure of the House: And he was called to the Bar, where he kneel'd down, and Mr. Speaker pronounc'd the Sentence accordingly.

In the Reign of Queen *Elizabeth*, Mr. *Parry*, a Member of Parliament, after he had given a Negative to a Bill, inveigh'd against it in violent Speeches, for which he was committed to a Serjeant at Arms; afterwards he was brought to the Bar, and told by the Speaker, if he thought fit to give his Reasons, the House was content to hear them, and he refusing, was committed to the Serjeant's Ward: But the next Day he was brought to the Bar, and making his Submission, he was readmitted into the House.

Exceptions are to be taken to Words let fall in a Debate the same Day, and before the Member go out of the House; or he who is offended may move that such Person be not permitted to leave the House, until he has given Satisfaction in what was by him spoken, after the Debate is over, when the Words are to be repeated, &c. and not before, where-

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whereby the publick Business would be interrupted.

*Anno 19 Jacobi*, some Speeches passed privately in the House, between two of the Members, and one of them going down the Parliament-Stairs, struck the other, who catching at a Sword in his Man's Hand, endeavoured to return the Stroke; and upon Complaint to the House they were both ordered to attend, where he who gave the Blow, was committed to the *Tower* during the Pleasure of the House.

In the same Reign Mr. *Lovel*, a Member of Parliament, gave Information, that one *Daryell* threatened his Person, by saying, that for a Speech spoken by him in the House, he should be sent to the *Tower*: *Daryell* was sent for by the Serjeant, ordered into Custody for some Days, and then to acknowledge his Fault or be committed to the *Tower*.

No Knight, Citizen or Burgeſs of the House of Commons, shall depart from the Parliament without leave of the Speaker and Commons, and the same is to be entred of Record in the Book of the Clerk of the Parliament. Stat. 6 H. 8.

The Calling of the House is chiefly to discover what Members are absent without Leave of the House, or just Cause; in which Cases Fines have been imposed: On calling over, such as are present are mark'd, and the Defaulters called over again the same Day, or the Day after, sometimes summon'd, and sometimes sent for by the Serjeant at Arms.

In the 1 and 2 P. & M. Informations were preferred by the Attorney General, against thirty-nine of the House of Commons for departing without Licence; whereof six of them submitted themselves to Fines; but 'tis very uncertain whether



ther any of them were ever paid. The Information was drawn as follows.

Midd. ff. **M**emorand' quod Edw. Griffin Armig' Attornat' Dom' Regis & Reginae Generalis, qui pro eisdem Domino Rege & Domina Regina sequitur, venit hic in Cur' dictorum Dominorum Regis & Reginae coram ipsis Rege & Regina apud Westm' die, &c. & dat' hic intelligi & informari Quod cum ad Parliamentum Dominorum Regis & Reginae nunc tent' apud Westm' annis Regnorum suorum primo & secundo inhibitum fuit per ipsos Dominum Regem & Dominam Reginam in eodem Parlamento quod nullus ad idem Parliament' summonitus & ibidem interessens, ab eodem Parlamento absque speciali Licentia dictorum Dominorum Regis & Reginae & Cur' Parliament' predict' recederet, seu seipsum aliquo modo absenteret. Quidam tamen Thomas Denton de, &c. Ar' Henricus Carey de, &c. Ar' Edmundus Plowden de, &c. Armig' &c. qui summoniti fuerunt ad dictum Parliamentum & in eodem Parlamento comparuerunt, ac ibidem interfuerunt mandati & inhibitionem Dominorum Regis & Reginae supradict' parvi pendentes, ac statum Reipublicae hujus Regni Angl' minime curantes aut ponderantes postea scil' die, &c. Annis Regnorum, &c. & durant' Parliament' predicto ab eodem Parlamento sine Licentia dictorum Dominorum Reg. & Reginae & Cur' sua praed' contemptuose recesserunt in ipsorum Dom' Regis & Reginae ac mandati & inhibitionis suorum praed' curiaeque praed' contempt' manifestum ac in magnum Reipublicae statum hujus Regni Angliae detriment' necnon in perniciosum exemplum omnium aliorum, &c. Unde idem Attornatus Dominorum Regis & Reginae petit advisamentum Cur' in praemiss. & debet' legis process. vers. eosdem Thomam Denton, &c. ad Respondendum Domino Regi & Dominae Reginae de contempt' predict', &c.

Of

OF ACTS of Parliament, some are introductory of a new Law, some declaratory of ancient Laws, and some are of both Kinds, by addition of greater Penalties. Also some ACTS are general, and some particular; and all Statutes relate to the first Day of Parliament, if it be not otherwise particularly limited. *Co. Inst. 3 Part, 25.*

By 42 *Edw. 3.* all Statutes are repealed that were against *Magna Charta*. Judges have determined whether ACTS are in Force or not. *Anno 36 H. 6.* Debated by the Judges, whether it were a perfect and legal ACT that passed in Parliament against Sir *John Pilkington*, for a Rape committed by him; and *Fortescue*, Chief Justice, held the ACT in Question to be a good ACT of Parliament; but referred it for greater Certainty to the Parliament. And Judges have debated and resolved what is a good Session of Parliament, and what is not, &c. *Roll. Rep. 29.* But they may not give their Opinions in any Matter of Parliament, with relation to Privilege, &c. as I have before observed.

King *Henry the Eighth*, Commanded Sir *Thomas Gawdy*, one of the Justices of the King's Bench, to attend the Chief Justices and know their Opinion, Whether a Man might be attainted of High Treason by Parliament, and never called to answer? And the Judges declared, it was a dangerous Question, and that the High Court of Parliament ought to give Examples to inferior Courts for proceeding according to Justice, and no inferior Court could do the like.

The House of Commons is the Grand Inquest of the Realm, to present publick Grievances and Delinquents to the King and Lords, to be punished by them: And any Member of the House of Com-

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mons has the Privilege of Impeaching the highest Lord in the Kingdom.

Matters of Parliament are to be determined by the Custom and Usage of Parliaments; and though the Parliament err, it is not reversible in any other Court. And not only what is done in the House of Commons, but what relates to the Commons during the Parliament, and sitting the Parliament, is no where else to be punished but by themselves, or a succeeding Parliament. *Sir Robert Atkins.*

In former Times both Lords and Commons sat together in one House of Parliament, and the Commons anciently had no continual Speaker, but after Consultation, their manner of Proceeding was to agree upon some Person of great Abilities, to deliver their Resolutions.

In the Reign of *William Rufus*, there was a great Council of Parliament held at *Rockingham*, and a certain Knight came forth and stood before the People, and spake in the Name and Behalf of them all; who was undoubtedly the Speaker of the House of Commons.

But the first Speaker certainly known, was *Petrus de Mountford*, 44 H. 3. when the Lords and Commons sat either in several Houses, or at least gave their Assents severally.

The next Speaker to *Petrus de Mountford*, was ——— *Scroope*, Anno 6 E. 3. And here it may not be improper to give an Account of the Speakers down to this Time.

Monfieur *William Trussel* was Speaker 13 E. 3.

*Sir Peter de La Mare*, 49 E. 3.

*Sir Thomas Hungerford*, 51 E. 3. This is the first named Speaker upon Record.

*Sir Pierce de La Mare*, 1 R. 2.

*Sir James Pickering*, 2 R. 2.

Sir

Sir John Goldesborough, 3 R. 2.

Sir John Goldesborough, 4 R. 2.

Sir Richard Walgrave, 5 R. 2. The first that made any formal Apology for Inability, &c.

Sir James Plokering, 6 R. 2.

Sir John Bushey, 17 R. 2. He was presented to the King in full Parliament by the Commons; and was the first so presented.

Sir John Bushey, 20 & 21 R. 2. The last of these Parliaments was held in a large House of Timber erected in Palace-Yard, Westminster, for the impeachment of the Duke of Gloucester, &c. wherein both Houses sat together.

Sir John Gheyney, 1 H. 4. He growing sick the next Day after he was presented, John Dorwood, Esq; was made Choice of in his Place: He desired Liberty to correct Mistakes in what he should deliver from the Commons.

Sir Arnold Savage, 2 H. 4. This was the first Time that the Commons were required by the King to chuse a Speaker.

Sir Henry de Redeford, 4 H. 4.

Sir Arnold Savage, 5 H. 4. This Speaker requested of the King in the Names of the Commons, that they might freely make Complaint of any Thing amiss in the Government, which the King consented to.

Sir William Sturmy, 6 H. 4. This was called *Parliamentum Indoctorum*, from no Lawyers being permitted to be chosen.

Sir John Tiptoft, 7 H. 4. This Gentleman sign'd and sealed the Deed of entailing the Crown, with these Words, *Nomine totius Communitatis*. He was afterwards made Lord Treasurer of England, and created Earl of Worcester.

Thomas Chaucer, Esq; 9 H. 4. 10 H. 4 and 13 H. 4.



*William Stourton*, Esq; 1 H. 5. This Speaker agreed to deliver in Parliament certain Articles, without the Assent of his Companions; but the Commons sent several of their Members to the Lords, to declare that their Speaker had no Authority from them, and desired to be excused, which the King accepted.

*John Dorwood*, Esq; 1 H. 5.

*Walter Hungerford*, Esq; 2 H. 5.

*Richard Redman*, Esq; 3 H. 5.

*Sir Walter Beauchamp*, 3 H. 5.

*Roger Flower*, Esq; 4 H. 5. 5 H. 5. and 7 H. 5.

*Richard Baynard*, Esq; 9 H. 5.

*Roger Flower*, Esq; 1 H. 6.

*John Russel*, Esq; 2 H. 6.

*Sir Thomas Wootton*, 3 H. 6.

*Richard Vernon*, Esq; 4 H. 6.

*John Tirell*, Esq; 6 H. 6.

*William Allington*, Esq; 8 H. 6.

*John Tirel*, Esq; 9 H. 6.

*John Russel*, Esq; 10 H. 6.

*Roger Hurst*, Esq; 11 H. 6.

*John Bowes*, Esq; 14 H. 6.

*Sir John Tirel*, 15 H. 6. and 17 H. 6.

*William Boerly*, Esq; 17 H. 6.

*William Tressam*, Esq; 18 H. 6.

*William Burley*, Esq; 23 H. 6.

*William Tressam*, Esq; 25 H. 6.

*John Day*, Esq; 27 H. 6.

*Sir John Popham*, 28 H. 6.

*Sir William Oldham*, 29 H. 6.

*Thomas Thorp*, Esq; 31 H. 6. arrested in Execution, and adjudged by the Lords, not to have Privilege, whereupon the Commons were commanded to chuse a new Speaker.

*Sir Thomas Charlton*, 31 H. 6.

*Sir John Wenlock*, 33 H. 6.

*Thomas*

*Thomas Tresham*, Esq; 38 H. 6.

*John Green*, Esq; 39 H. 6.

*Sir James Strangwaies*, 1 E. 4.

*John Say*, Esq; 7 E. 4.

*William Allington*, Esq; 12 E. 4. and 17 E. 4.

*John Wood*, Esq; 22 E. 4.

*William Catesby*, Esq; 1 R. 3. In these Times the Speaker was chosen; presented to, and approv'd by the King, in the same manner as is now practised.

*Thomas Lovel*, Esq; 1 H. 7. after Knighted and made of the Privy Council.

*John Mordaunt*, Esq; 3 H. 7.

*Sir Thomas Fitzwilliams*, 4 H. 7.

*Richard Empson*, Esq; 7 H. 7. A Gentleman learned in the Laws.

*Sir Reignald Bray*, 11 H. 7.

*Robert Drury*, Esq; 11 H. 7.

*Thomas Inglefield*, Esq; 12 H. 7.

*Edmond Dudley*, Esq; 19 H. 7. Learned in the Laws; afterwards of the Privy Council.

*Sir Thomas Inglefield*, 1 H. 8.

*Sir Robert Sheffield*, 3 H. 8. Recorder of London.

*Sir Thomas Nevil*, 6 H. 8. He first introduced the Custom of making an Oration.

*Sir Thomas More*, 14 & 15 H. 8. This Gentleman pray'd, that if any of the Commons should in any Debate speak more largely than they ought, that it might be pardoned. He was afterwards made Lord Chancellor.

*Thomas Audley*, Esq; 21 H. 8. Serjeant at Law; afterwards made Lord Keeper, and lastly Lord Chancellor of England.

*Richard Rich*, Esq; 28 H. 8. The first Speaker that is recorded to have made Request for Access to the King. He was likewise afterwards made

Lord Chancellor, and created a Baron, from whom was descended the Earl of *Warwick and Holland*.

*Sir Richard Hare*, 31 *H. 8.* afterwards Master of the Rolls, and Lord Keeper of the Great Seal of *England*.

*Thomas Moyle*, Esq; 34 *H. 8.* this Speaker was the first that petition'd for Freedom of Speech, upon Record; the Petition for Privilege from Arrests is of later Date.

*Sir John Baker*, 1 *Ed. 6.*

*Sir James Dyer*, 7 *Ed. 6.* Serjeant at Law, afterwards King's Serjeant, and Lord Chief Justice of the Common Pleas.

*John Pollard*, Esq; 1 *Ma.*

*Clement Higham*, Esq; 1 & 2 *P. & M.* afterwards Lord Chief Baron of the Exchequer.

*John Pollard*, Esq; 2 & 3 *P. & M.*

*William Cordal*, Esq; 1 & 2 *P. & M.* Master of the Rolls, and one of the Privy Council.

*Sir Thomas Gargrave*, 1 *Eliz.* learned in the Laws, and one of the Queen's Counsel: He made the Requests now usual, viz. for free Access to the Queen, Freedom of Speech, and Privilege from Arrests, &c.

*Thomas Williams*, Esq; 5 *Eliz.*

*Richard Onslow*, Esq; 8 *Eliz.* he was afterwards Solicitor General.

*Christopher Wray*, Esq; 13 *Eliz.* learned in the Laws, afterwards Lord Chief Justice of the King's Bench.

*Robert Bell*, Esq; 14 *Eliz.* made Lord Chief Baron.

*John Popham*, Esq; 23 *Eliz.* afterwards made Attorney General, and Lord Chief Justice of *England*.

Mr. Serjeant *Puckering*, 27 *Eliz.* made Lord Keeper.

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Mr. Serjeant *Snag*, 31 *Eliz.*

*Edward Coke*, Esq; 35 *Eliz.* the famous Lawyer; afterwards Knighted, made Lord Chief Justice of the Common Pleas, a Privy Counsellor, and lastly, Lord Chief Justice of *England*.

Mr. Serjeant *Nelverton*, 39 *Eliz.* afterwards made one of the Justices of the King's Bench.

Mr. Serjeant *Crook*, 43 *Eliz.* made also one of the Judges of the King's Bench.

Mr. Serjeant *Philips*, 1 *Jac.* Master of the Rolls.

Sir *Ranulph Crew*, 12 *Jac.* afterwards Chief Justice of the King's Bench.

Sir *Thomas Richardson*, 18 *Jac.* Serjeant at Law, after Chief Justice of the Common Pleas.

Sir *Thomas Crew*, 21 *Jac.* Serjeant at Law.

Sir *Thomas Crew*, 1 *Car. 1.*

Sir *Heneage Finch*, 1 *Car. 1.* Recorder of *London*.

Sir *John Finch*, 3 & 4 *Car. 1.* afterwards made one of the King's Counsel, then Chief Justice of the Common Pleas, and after that Lord Keeper.

*John Glanville*, Esq; 16 *Car. 1.*

*William Lenthal*, Esq; 16 *Car. 1.*

Sir *Harbottle Grimston*, 12 *Car. 2.* afterwards made Master of the Rolls.

Sir *Edward Turner*, 13 *Car. 2.* advanc'd to Solicitor General, and Lord Chief Baron of the Exchequer.

Sir *Job Charlton*, 24 *Car. 2.*

*Edward Seymour*, Esq; 24 *Car. 2.* and 30 *Car. 2.*

Mr. Serjeant *Gregory*, chosen Speaker in the room of Sir *Edward Seymour*.

*William Williams*, Esq; 32 & 33 *Car. 2.*

Sir *John Trevor*, 1 *Jac. 2.*

*Hen. Powle*, Esq; Speaker of the Convention, 1689.



Sir *John Trevor*, 2 *W. & M.* afterwards made Master of the Rolls.

*Paul Foley*, Esq; 8 *W. 3.*

Sir *Thomas Littleton*, 10 *W. 3.*

*Robert Harley*, Esq; 13 *W. 3.* and 1 *Ann.* since preferr'd to the Office of Secretary of State, after that created Earl of *Oxford*, and made Lord Treasurer of *England*.

*John Smith*, Esq; 4 & 6 *Ann.* the latter being the first Parliament of *Great Britain*, by the Union. He was afterwards made a Teller of the Exchequer.

Sir *Richard Onslow*, 7 *Ann.* since created a Peer of *Great Britain*, by the Style and Title of Lord *Onslow*.

*William Bromley*, Esq; 9 *Ann.* afterwards advanced to Secretary of State.

Sir *Thomas Hanmer*, 12 *Ann.*

The Right Honourable *Spencer Compton*, Esq; 1 *Georg.* Speaker at this Time.

The Speaker is the Mouth of the Commons: and the general Assent of the Realm to make Laws and Ordinances, the antient Writers call'd,

*Commune Consilium, Magnum Consilium, Placitum generale, Curia altissima, & Parliamentum generale, seu altissimum.*

## C H A P. IV.

*Of the great Officers of STATE, &c. their Original, Power and Authority; respective Courts for the Government of the Household, &c. And the Laws and Statutes concerning them in all Cases.*

OF the nine great Officers of the Crown, the Lord High Steward is the first. In the Reign of the Conqueror, *William Fitz-Eustace* was High Steward of *England*; and this Office was originally of Inheritance, belonging to the Earldom of *Leicester*, it continuing in that Family till the Reign of *Henry the Third*, when on a Forfeiture the King gave it to *Edmond* his second Son, and it remained in his Line until the Time of *Henry Bullingbrook*, Son and Heir of *John of Gaunt*, Duke of *Lancaster*, afterwards King of *England*, who was the last that had any Estate of Inheritance in the Office of Lord High Steward.

Since that Time, a Lord High Steward has been made only *pro hac vice*, to officiate either at a Coronation, or for Trial of some Peer of the Realm, for Treason or Felony, or some other capital Crime; wherein he is to judge and give Sentence, and then his Commission determines. At a Coronation he keeps his Court at the King's Palace at *Westminster*, where he sits judicially, to receive the Bills and Petitions of all such Noblemen and others who claim to do Service at the great Solemn-

Solemnity, and to receive the Fees and Allowances usual.

The first Lord High Steward that was created *hac vice* for the Solemnization of a Coronation, was *Thomas*, second Son of *Henry* the Fourth; and the first Lord Steward for the Trial of a Peer, was *Edward*, Earl of *Devon*, on the Arraignment of *John Holdernefs*, Earl of *Humington*, in the same Reign. The Lord High Steward was formerly the same Officer as the *Regni Vice Rex* in *Sweden*, and the Statholder of *Denmark*, who is also called *Vice-Roy*, or *Lieutenant du Roy*: And he was styled *Magnus Angliæ Seneschallus*.

The second great Officer of State is the Lord High Chancellor. This Office is likewise very ancient, for *Arfastus* Bishop of *Northelmbam* in *Norfolk*, was Chancellor to *William* the Conqueror, and *Edward* the Confessor had his Chancellor. This Office has been granted various ways, by Patent, at Will, and for Term of Life, which was the Case of Cardinal *Wolsey*, but that Patent was held void.

The Lord Chancellor keeps the King's Great Seal, and all Patents, Commissions, Warrants, &c. from the King, are perused by him before signed: King *Henry* the Fifth had two Great Seals, one of Gold, which he delivered to the Bishop of *Durham*, whom he made Lord Chancellor of *England*, and another of Silver, which he delivered to the Bishop of *London* to keep. The Lord Chancellor has the Disposition of all Ecclesiastical Benefices in the Gift of the Crown under 20 *l.* a Year in the King's Books, which has occasioned this Office to be formerly possessed by a Clergyman: And in his Court of Chancery, he judges according to Equity and Conscience, and not according to the Common Law as other Civil Courts do, but he is to moderate

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rate the Rigour of the Law, and give Relief where the other Courts allow no Remedy.

The Lord Keeper of the Great Seal of England, for the Time being, has always used and exercised the same Power and Authority, and been allowed the same Precedency as the Lord Chancellor; but they differ in their Creation, for the Lord Keeper is created *per traditionem magni sigilli sibi per Dominum Regem*, and by taking an Oath only; and the Lord Chancellor has besides, a Patent; the Oath of Chancellor or Lord Keeper, is faithfully to serve the King; to do Right to all manner of People, according to the Laws and Customs of the Realm; truly to counsel the King, and the same keep secret; not to suffer the Rights of the Crown to be diminished; and to procure the King's Profit.

The Office of Lord Chancellor in France is *durante vita*; but here 'tis *durante beneplacito Regis*. The Lord Chancellor, (there being now no Lord High Steward) is the first Officer in the Kingdom; And as this High Station has been always filled with the greatest Personages, so I may venture to say, that this Age has produced four Lord Chancellors the most shining Ornaments in the Supreme Courts of Judicature, that ever were honoured with that weighty Employment, and no way inferior to the great Lord Bacon, in the Reign of the glorious Queen Elizabeth; I mean the Lords Somers, Cowper, Harcourt and Parker, the present Chancellor, and not the least in Esteem for his eminent Qualifications.

The Incomes of the Lord Chancellor amount to about 7000 *l. per Annum*.

The Lord High Treasurer of England, is the third great Officer of the Crown; he holds his Office *durante beneplacito*, and is instituted by the Delivery of a white Staff to him by the King; and in former



former Times he received this great Office by the Delivery of the Golden Keys of the Treasury.

*Hugo Pateshul* was the first Treasurer of the Exchequer, and afterwards *Summus Thesaurarius*, 18 H. 3. The Oath of the Lord High Treasurer varies very little from that of the Lord Chancellor: He is a Lord by his Office, and has under his Charge and Government all the King's Revenues kept in the Exchequer: He has also the Check of all the Officers employed in collecting the Customs and Royal Revenues. All the Officers of the Customs in all the Ports of *England*, are in his Gift; he has the Nomination of Escheators in every County; and he makes Leases of all the Lands belonging to the Crown.

The Lord Treasurer of *England*, has granted to him by Letters Patents *Thesaurarium Scaccarii Regis Angliæ*, which of ancient Time was a distinct Office by it self. And by 31 E. 3. in Writs of Error the Lord Chancellor and Lord Treasurer shall cause the Record and Process of the Exchequer to be brought before them, who are Judges; but the Writ is to be directed to the Treasurer and Barons of the Exchequer, who have the keeping of the Records.

The high and important Post of Lord Treasurer, has of late Years been thought too great a Task for one Person, for which Reason it has been generally under the Management of Lords Commissioners of the Treasury.

The Salary of a Lord Treasurer is 8000 *l.* per Annum.

Next to the Lord Treasurer, is the Lord President of the Council, the fourth great Officer of State. He is as ancient as the Reign of King *John*, and has sometimes been called *Principalis Consiliarius*, and other Times *Capitalis Consiliarius*. The Office

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Office of President of the Counsel was ever granted by Letters Patents under the Great Seal *durante bene placito*; and this Officer is to attend upon the King, to propose Business at the Council-Table, and report to his Majesty the several Transactions there. By Stat. 21 H. 8.

Sir Edward Coke in his fourth Part of the *Institutes of the Laws of England*, has these notable Conclusions with respect to the Privy-Council, *viz.* That it is consistent with Safety for a Privy Counsellor to give the King Counsel when demanded; that the truest and best Counsel is ever given to a Prince, when the Question is so evenly propounded, as the Counsellor cannot discern which way the King himself inclines; that Resolution should never precede Deliberation, nor Execution go before Resolution; and when upon Debate and Deliberation any Matter is well resolved by the Council, a Change thereof upon some private Information is neither safe nor honourable.

*Non semper in uno gradu, sed in una via, non semitat, sed aptat.* Seneca.

The Lord Privy Seal is the fifth great Officer of State, and next to the Lord President of the Council: This Officer is named in the Statutes 2 and 12 R. 2. He is a Lord by his Office, and through his Hands pass all Charters and Grants of the King, Pardons, &c. before they come to the Great Seal.

Upon the Lord Privy-Seal are attendant four Clerks, who by 27 H. 8. are to take the following Fees for Warrants passing the Seals, *viz.* for a Warrant upon a Bill for a Tales or Reward, 12 *d.* For a Warrant for the Gift of any Office, 20 *d.* For a Warrant for a Pension, Annuity, Salary, &c. 20 *d.* For the Warrant of a Special Livery or Perpetuity, 6 *s.* 8 *d.* Upon every Bill for a *Conge D'Eslier*,

*D'Eslier*, Donation, Presentation, &c. 3 s. 4 d.  
For a Warrant upon a Licence, Pardon, &c.  
2 s. &c.

The *Lord Privy Seal*, is to put his Seal to no Grant without good Warrant; nor with Warrant, if it be against Law, or inconvenient, but that first he acquaint the King therewith. *Co. Inst. 4 Part. 55.*

The sixth great Officer of the Crown, is the *Lord Great Chamberlain* of England: An Officer of great Antiquity. In the Reign of *Henry the First*, this Office was enjoyed by the Earls of *Oxford*, as an Inheritance; but since it has been possessed by the Earls of *Lindsey*, and the Duke of *Ancaster*.

To this great Officer belongs the Government of the Palace of *Westminster*; and upon all solemn Occasions, the Keys of *Westminster-Hall*, the Court of Wards, and Court of Requests are delivered him. The Gentleman-Usher of the Black Rod, Yeoman-Usher, &c. are under his Authority. He disposes of the Sword of State to be carried before the King when he comes to the Parliament, and goes on the Right Hand of the Sword next the King's Person, and the Lord Marshal on the Left. He has the Care of providing all Things in the House of Lords in Time of Parliament, and for that Purpose an Apartment is fitted up for him near the Lords House. He has also the issuing out of Warrants for preparing and fitting of *Westminster-Hall* against a Coronation, or for the Trial of a Peer.

To him belongs Livery and Lodging in the King's Court, and certain Fees due from every Archbishop and Bishop when they do Homage to the King, and from all Peers at their Creation. On a Coronation, he is to carry the Coif, Gloves and Linnen; the Sword and Scabbard, the Gold to be offered, and the Robe Royal and Crown; and to dress and undress the King, serve him before and after Din-

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ner with Water to wash his Hands, &c. And is to have for his Fees the King's Bed, and all the Furniture of his Bed Chamber, the King's Night Apparel, and the Basin wherein the King washes, Towels, &c. besides forty Ells of Crimson Velvet for his own Robes.

The *Lord High Constable of England*, is the seventh great Officer. The Power and Jurisdiction of the Lord Constable, as well as the Lord High Steward's was anciently so extensive, that some Time since both those Offices have been thought too great to be exercised by any Subject, unless at a Coronation to compleat the Grandeur of that Ceremony, or on Trials of Peers, and the ancient Trials by Combat.

But in the first Year of *Henry the Fourth*, the Lord North was made Lord Constable for Life: And this Office being formerly of Inheritance by Tenure, the Line of the *Bobuns*, Earls of *Hereford* and *Essex*, enjoyed it in Right of the Manors of *Harlefield*, *Newman*, and *Whitenburst*, and afterwards it came to the *Staffords* and Dukes of *Buckingham*, as Heirs general of them, but *Edward Duke of Buckingham* being attainted of High Treason, 13 H. 8. this Office became forfeited to the Crown, and since that Time it was never granted to any Subject, but *pro hac vice*, to officiate at a Coronation, &c.

The Grant of the Office of Constable of England, ran thus: *Officium Constabularii Angliæ una cum omnibus feodis, proficuis, commoditatibus, & Emolumentis quibuscunque officio prædicto qualitercunque pertinentibus, & ab antiquo debitis & consuetis.* And Anno 7 E. 4. the Earl *Rivers* was made Lord Constable for Life, and Power was given him to have Conusance in Cases of High Treason, &c. which was contrary to the Common and Statute Laws. The Power and Jurisdiction of the Lord High



High Constable is the same with the Earl Marshal, and he sits as Judge, having Precedence of the Earl Marshal in the Marshal's Court.

The eighth great Officer of State is the *Earl Marshal of England*; this Office is very ancient, and formerly had greater Power annex'd to it than now : It has been long hereditary in the House of *folk*.

The *Earl Marshal* takes Cognizance of all Matters of War and Arms, as the Constable does ; he had anciently several Courts under him, but has now only the *Marshalsea* ; and he is not only a Judge, but his Business is to see that Execution be done, and his Office is in force both in Time of Peace and War, so that though the Lord Constable has the Precedency, yet the Court held before them is called the Marshal's Court.

The *Earl Marshal*, besides his Power in Matters of War and Arms, determines Controversies touching Deeds of Arms out of the Realm upon Land, and any Thing concerning Wars within the Realm, which cannot be determined by the Common Law ; and in these Matters he is commonly guided by the Civil Law.

If a Man be wounded on the High Sea, and die of the same Wound in a Foreign Country, though this be done in the Seas belonging to *England*, yet it cannot be enquired of by the Common Law, because it is not within any of the Counties of the Realm. Neither can the Admiral hear and determine this Murder, for though the Stroke was within his Jurisdiction, yet the Death was *Infra Corpus Comitatus*, whereof he cannot enquire ; neither is it within the Statute, 28 *H. 8.* because the Murder was not committed on the Sea. But by the Statute 13 *R. 2.* the Constable and Marshal may hear and determine the same. 3 *Part, Co. Inst.* 48.

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Next the Earl Marshal is the *Lord High Admiral of Great Britain*, the ninth and last great Officer of the Crown. He is that high Officer or Magistrate with whom is entrusted the Management of all Maritime Affairs; the Government of the King's Navy; of all Things done upon or beyond the Sea; upon the Sea-Coast in Ports and Havens; and upon all Rivers below the first Bridge next the Sea; with Power of Decision in all Cases Maritime, as well Civil as Criminal. But by the Common Law, if a Man were killed upon any Arm of the Sea where the Land is seen on both sides, the Coroner was to enquire of this and not the Admiral, because the County may take Cognizance thereof; and where the County may enquire, the Lord Admiral has no Jurisdiction; and the Land between the Flowing and Reflowing of the Sea belongs to the Lord of the Manor. *Co. 4 Inst.* 141. For the Sea so far as the Low Water Mark is observed, is counted *infra corpus Comitatus*.

To the Lord High Admiral belong all Wrecks of the Sea, Deodands, Goods lying in the Sea, floating, &c. and Goods cast away on the Sea-shoar, not granted to Lords of Manors; all great Fishes called Royal Fish, except Whales and Sturgeon: A Share of Prizes in Time of War; the Goods of Pirates, Felons, &c. condemned; all Penalties and Amerciaments for Transgressions at Sea, on the Sea-shore, and in Ports; he has Power to appoint Coroners to view dead Bodies found on the Sea-coasts or at Sea, Commissioners of Justice in the Court of Admiralty; to imprison, release, &c. He has Authority to commissionate not only all Sea-Captains, but a Vice-Admiral and a Rear-Admiral; and sometimes he has Commission to bestow Knighthood on such as shall merit it at Sea.

The Lord High Admiral appoints Vice-Admirals and Judges in several Parts, to exercise Maritime Jurisdiction: He has a Council for the Affairs of the Admiralty, and has several Courts, and all Process issue in his Name, not the King's. He has under him a Lieutenant, who is Judge of the Admiralty, commonly a learned Doctor of the Civil Law; and the Proceedings in this Court in all Civil Matters is according to the Civil Law, the Sea being without the Limits of the Common Law. But in Criminal Matters, Piracy, &c. Offenders are to be tried by Special Commission of the King to the Lord Admiral, wherein some Judges are assigned, and the Trials proceed according to the Laws of *England*. By Statute 27 H. 8.

By the Parliament-Rolls 7 H. 4. it appears, that the Merchants, Mariners, and Owners of Ships, undertook the Protection of the Seas for the Subsidies of Tonnage and Poundage, &c. and those Merchants, &c. were to name two Persons, the one for the South Part, and the other for the North Part, who by Commission should have the like Power as Admirals. In the Reigns of R. 2. and H. 4. &c. there was a Great Admiral of *England*; and the 14th of H. 6. the King by Charter constituted *John Holland* Duke of *Exeter*, and *Henry* his Son, to be *Admirallos Angliæ, Hiberniæ, & Aquitaniæ, pro termino vitæ*. But this Charter being of a judicial Office, and granted to two, it was held void.

The Patent of the Lord Admiral runs thus, *Magnæ Britannicæ & Hiberniæ, ac Dominiorum & Insularum earundem, Villæ Galesiæ & Marchiarum ejusdem, Normandiæ, Gasconiæ, & Aquitaniæ Magnus Admirallus & Præfectus Generalis Classis & Marium dictorum regnorum.*

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This Office for its great Importance is committed to the Care of divers Commissioners, like unto the Office of Lord Treasurer.

Besides these great Officers of State, there are other considerable Officers under the King, viz. the two principal Secretaries of State, the Lord Steward of the King's Household, Lord Chamberlain of the Household, Master of the Horse; Treasurer of the Household, Controller, Cofferer, Master of the Household, Master of the Ceremonies, &c.

The Secretaries of State have an extraordinary Trust, which renders them very considerable in the Eyes of the King; and of the Subject also, whose Requests and Petitions are for the most part lodg'd in their Hands, to be represented to the King, and to make Dispatches thereupon pursuant to his Majesty's Directions.

They are Privy Counsellors and take their Places accordingly, and a Council is seldom or never held without the Presence of one of them at least. The Correspondence with all Parts of *Great Britain*, is managed by either of the Secretaries without Distinction; but in respect to Foreign Affairs, all Nations which have Intercourse of Business with *Great Britain*, are divided into two Provinces, the *Southern* and the *Northern*; of which the *Southern* is under the Senior, and the *Northern* is usually under the Junior Secretary, &c.

The Secretaries of State have the Custody of the King's Seal, called the Signer; their Office is in *Whitehall*, where all Grants prepared for the King's Hand, are return'd when sign'd, and there transcribed again; afterwards the Transcript is carried to one of the Principal Secretaries of State, and sealed, and then it is called a Signer, which being directed to the Lord Privy Seal, is his War-



rant for issuing out a Privy Seal upon it; and the Privy Seal is an Authority to the Lord Chancellor to pass the Great Seal, as the Signet was to the Lord Privy Seal to affix that Seal to the Grant, where the Nature of the Grant requires the passing of the Great Seal; and in all three Offices, *viz.* of the Signet, Privy Seal, and Great Seal, the Grant is to be transcribed. But Privy Seals for Money begin in the Treasury, from whence the first Warrant issues countersigned by the Lord Treasurer.

They wait by Months, each of them three Months in a Year; one of them always attends the Court, and by the King's Warrant prepares all Bills or Letters for the King to sign, not being Matter of Law: Depending on them is an ancient Office called the Paper-Office, which contains all the publick Papers, Writings, Matters of State and Council; all Letters, Intelligences, Negotiations of publick Ministers, and all Dispatches, &c. There was but one Secretary of State till about the end of the Reign of King *Henry* the Eighth, when that great and weighty Office was thought proper to be discharged by two Persons, both of equal Authority, and both styled Principal Secretaries of State.

Their Salaries are each about 2000 *l. per Ann.*

The *Lord Steward of the Household* is the Chief Officer of the King's Court; to whom is committed the Care of the King's House; and as his Power is great, so is his Dignity and Honour.

He is a White-staff Officer, and at the Death of the King breaks it over the Hearse, and thereby discharges all Officers under him. He has Authority over all Officers and Servants of the King's House, except those belonging to the Chapel, Chamber, and Stable: And the Palace Royal is exempted

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exempted from all Jurisdiction of any Court, but only of the Lord Steward, or in his Absence, of the Treasurer and Controller of the Household, with the Steward of the Marshalsea, who may without any Commission, and by Vertue of their Office hear and determine all Treasons, Murders, Felonies, Breaches of the Peace, &c. committed in the King's Palace; or within two hundred Foot of the Gate. If any Person strike another within the Palace where the King is resident, so as to draw Blood, his Right Hand shall be struck off, and he shall suffer perpetual Imprisonment.

Under the Lord Steward, are the Treasurer of the Household, Controller, Cofferer, Master of the Household, Clerks of the Green-Cloth, &c. These with the Lord Steward sit in the Compting House, for daily taking the Accompts of all Expences, and for making Provision for the Household; adjusting Payments for the same; and for making Orders for the Well-government of the Servants of the Household. The Controller of the Household's Office, is to control the Accompts of the Green-cloth; the Cofferer pays the Wages of the King's Servants above and below Stairs, and for Provisions by Direction of the Green-cloth, and he has a Superintendency over other Officers of the House, for their good Demeanor, &c. The Master of the Household surveys the Accompts, &c.

In the Compting-House is the Green-cloth, which is a Court of Justice, composed of the Lord Steward, Treasurer of the Household and other Officers afore-mentioned. To this Court is committed the Government and Over-sight of the King's Court and Palace, with Authority for keeping of the Peace within the Verge, wheresoever the Court shall be resident; and Power of correcting all Servants who shall misbehave themselves.

The Lord Steward at the beginning of Parliaments, is to attend the King's Person, and to administer the Oaths to the Members of the House of Commons; and at the End of every Parliament, the Parliamentary Expences, &c. are to be adjusted by him.

The Salary of the Lord Steward and Board-wages amount to 1600 *l. per Annum*.

The *Lord Chamberlain* is the next Officer of the Household to the Lord Steward; he has the Oversight and Government of all Officers above Stairs, and belonging to the King's Chamber, (except the Precinct of the King's Bed-chamber, which is under the *Groom of the Stole*;) He has also the Oversight of the Officers of the Wardrobe; of Artificers retained in the King's Service, Messengers, Comedians, Revels, Musick, &c.

The Serjeants at Arms are likewise under his Inspection; and the King's Chaplains, Physicians, Apothecaries, Surgeons, Barbers, &c. The Lord Chamberlain has under him a Vice-Chamberlain, and they are both always Privy Counsellors: There are likewise Gentlemen of the Privy Chamber instituted by King *Henry* the Seventh, to attend on the King and Queen at Court in their Diversions, Progresses, and on all emergent Occasions: These Gentlemen execute the King's verbal Commands, and six of them are always appointed by the Lord Chamberlain, with a Nobleman and the Master of the Ceremonies, to wait upon all Foreign Ambassadors from crowned Heads in their publick Entries, and to their Audiences.

The Office of Master of the Ceremonies was instituted by King *James* the First, for the more magnificent Reception of Ambassadors and Strangers of the greatest Quality. He wears a Chain of Gold with a Medal, having under the Crown of  
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England an Emblem of Peace, and an Inscription of *Beati pacifici*, King James's Motto; and on the other side *Dieu & Mon Droit*, with an Emblem of War.

After the Lord Chamberlain is the *Master of the Horse*, the third great Officer of the King's Household. He has the Ordering and Government of the King's Stables, of all Horses, Racers, and Breeds of Horses belonging to his Majesty. He has the Charge of all Lands and Revenues appropriated for defraying the Expence of the King's Breed of Horses, of the Stable, Litters, Sumpter-Horses, Coaches, &c.

He has also the Power of Equeries and Pages, of the Footmen, Grooms, Coachmen, Farriers, Smiths, Sadlers, &c. all other Artificers working to the King's Stables, to whom he administers an Oath to be true and faithful. But the Accounts of the Stables, of Liveries, Wages, and Board-wages, are by the Avener brought to be passed and allowed by the Board of Green-cloth.

The Master of the Horse only has the Privilege of making use of any Horses, Footmen, or Pages, belonging to the King's Stables: And at any solemn Cavalcade, he rides next to the King with a led Horse of State.

To enumerate the several inferior Offices belonging to the King's Household is not my particular Business in this Treatise; it would take up a great deal of room to little Purpose, I therefore omit them, and proceed to the Laws relating to Offices in general; but first it may not be improper to take some notice of the Lord Almoner, who disposes of the Royal Bounty to the Poor, as Charity is in all Persons highly commendable, but more eminently so in a Prince, who has it in his Power to deal out Felicity to the oppressed part of



Mankind, and who neither wants Will nor Ability to dispense the largest Benefactions.

The *Lord Almoner* has the Disposition of the King's Dish of Meat after it comes from the Table, which he may give to whom he pleases, or instead of it 4 *d.* every Day. He distributes 4 *d.* in Money, a two-penny Loaf, and a Gallon of Beer, or instead thereof, 3 *d.* daily at the Court-Gate, to twenty-four poor Men of the Parish adjacent to the King's Place of Residence, nominated by the Parishioners, to each of them that Allowance: And every poor Person before he receives the Alms, is to repeat the Lord's Prayer and the Creed in the Presence of one of the King's Chaplains, deputed by the Lord Almoner.

The Almoner likewise relieves with a sufficient Competency, the poor Pensioners to the King and Queen below Stairs, *viz.* such of the Servants as are become unfit for Service, or else the poor Widows of his Majesty's Household Servants, whose Husbands were not able to provide for them and their Children: And the Sub-Almoner is to scatter new coined Two-pences in the Towns and Places through which the King passes in his Progress, amongst the Poor, to a certain Sum.

For all which Uses the Lord Almoner receives (besides other Money allowed by the King) all Deodands, and Goods of *Felo's de se.*

All Offerings made at the Holy Altar by the King and Queen, are distributed amongst the Poor by the Dean of the Chapel: There are twelve Days in the Year, being high Festivals, called Offering Days; they are *Christmas, Easter, Whitsunday, All-Saints, New-Year's Day, Twelfth-Day, Candlemas, Annunciation, Ascension, Trinity-Sunday, St. John Baptist, and Michaelmas Day.* The Offering usually made by King *James* the First, was a piece of Gold,

Gold, having on one side the Pourtrait of the King kneeling before an Altar, with four Crowns before him, and circumscrib'd with this Motto, *Quid retribuam Domino pro omnibus quæ tribuit mihi?* And on the other side, *A Lamb lying near a Lion,* with this Motto, *Cor contritum & humiliatum non despiciet Deus.*

I am now to take Notice of the Laws and Statutes concerning Offices in general. And first the Statute 1 H. 6. enacts, That for the better Government of the King's Courts, and Ease of his People, all Officers made by the King's Letters Patents within the said Courts, which have Power and Authority, by Vertue of their Offices, to appoint Clerks and Ministers under them, shall be charged and sworn to appoint such Clerks and Ministers for whom they will answer shall be sufficient, faithful, and attending to the Performance of their respective Businesses. This is the Law, *Respondet Superior.*

By the Statute 12 R. 2. it was enacted, That the Lord Chancellor, Treasurer, Steward of the King's House, Lord Chamberlain, Judges, &c. shall not put any Person into any Place under them for Gift, Brocage, Favour or Affection; but that all Officers and Ministers of the King are to be made of the best, most lawful, and sufficient Persons; a Law which, Sir Edward Coke tells us, is worthy to be written in Letters of Gold.

The Stat. 5 & 6 Ed. 6. enacts, That none shall bargain or sell any Office or Deputation, or receive or take any Money, Fee, Reward, or any other Profit directly or indirectly, or accept any Promise, Agreement, Bond or Security to receive any such Profit for the same, which Office shall concern the Administration or Execution of Justice, or the Receipt, Controllment or Payment of any  
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of the King's Money or Revenue, or any Auditorship, or Surveying of the King's Lands, or any of his Customs, or any Clerkship in any Court of Record, &c. on Pain that the Bargainee shall lose his Place; the Bargainor be adjudg'd disabled to execute the same; and every such Agreement shall be void.

But this Act shall not extend to any Office of Inheritance, for the keeping of a Park, Forest, Manor, &c. nor to the two Chief Justices, or Justices of Assize; but that they may grant Offices as they did before the Making of this Law.

Agreeable to this, is a Clause in a late Act, with relation to Officers in the Army, *viz.* That every Commission-Officer hereafter to be employ'd in Military Service, shall, before his Commission be registred, make Oath upon the Evangelists, that he hath neither directly nor indirectly given, nor promis'd to give any Sum of Money, Present, Gift, or Reward, to any Person or Persons whatsoever, for obtaining his Commission, other than the usual Fee to the Secretary of State, or the Secretary of the Commander in Chief, Countersigning such Commission. 6 & 7 W. 3.

These Acts are of the greatest Use for the Service of the Publick; and if no Person were permitted to enjoy more than one Office, the Business of the Government would still be under a better Regulation; The Judges observe this antient Rule of Law, *Nemo duobus utatur Officiis*; and it would tend very much to the Advancement of Right and Justice, and to the Preferment of Men of Merit; if the like was regarded in all Offices, as well Ecclesiastical as Civil.

Several Offices were never instituted to be us'd by one Man: And no new Office can be erected with new Fees, or old Offices establish'd with new Fees, without an Act of Parliament; for that the

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Fees amount to a Tallage or Taxation upon the Subject, who may not be so charg'd but by Parliament. Co. 2 part, 533.

The King's Officers are not to pay his Creditors less than their due, nor to compound the same, or take Reward for Payment, under the Penalty of rendering double to the Party griev'd, and Punishment at the Will of the King: Nor may the King's Debts be bought at an under Value.

In the 50th Year of King Ed. 3. *Richard Lyons*, Merchant of *London*, and Farmer of the Customs, bought several Debts of divers Creditors of the King, for small Value; and he was adjudg'd by Parliament for the said Offence, and for Bribery, to pay to the King's Creditors their due Debts, to be imprison'd during Pleasure, and all his Lands, Tenements, and Goods to be seised to the King's Use.

And by the Rolls of Parliament the same Year, *John*, Lord *Nevil*, one of the King's Privy Council, bought divers Debts due from the King to the Lady *Ravensholme*, under their full Value: And being charg'd therewith in Parliament, he confess'd that he receiv'd of the said Lady 95 *l.* which she presented him with for the obtaining of her Debt; but he had Judgment of Imprisonment at the King's Will, and that his Offices, Lands, and Goods, should be seised into the King's Hands, and to make Restitution of the Sum receiv'd.

By a late Statute, any Action or Suit may be prosecuted in the Courts of *Westminster* against any Officer of the Revenue, or other Officer of Publick Trust, for any Forfeiture, Misdemeanor, or Breach of Trust relating to such Office or Trust; and no such Suit or Execution thereupon, tho' such Officer be a Peer, Lord of Parliament, Knight, Citizen, or Burgees of the House of Commons, or otherwise



otherwise entitled to Privilege, shall be staid by Colour of such Privilege. But nothing herein shall subject the Person of such Officer, being a Peer, to be arrested; but such Process shall issue out against him as should have issu'd out of the Time of Privilege. Nor shall the Person of a Knight, Citizen, or Burgeſs of the House of Commons be arrested during Time of Privilege, but Summons, Attachment, and Distress Infinite, &c. shall be issu'd until the Party appear. 2 Ann. c. 18.

There are several Acts of Parliament which oblige all Officers Civil and Military, &c. to take the Oaths: The first I shall mention is 25 Car. 2. By this Act all Persons that bear any Office, Civil or Military, or receive any Salary or Wages by any Grant from the King, or who shall have Command, or Place of Trust, from or under him, or from any of his Predecessors, or by their Authority, in *England, Wales, Town of Berwick*, or in the Navy, or in the Isles of *Jersey and Guernsey*, or shall be in the Household, or in the Service of the King, or the Duke of *York*, are to appear in the Court of Chancery, King's Bench, or the Quarter Sessions, and take the Oaths of Supremacy and Allegiance; subscribe the Declaration against Transubstantiation; and also receive the Sacrament according to the Usage of the Church of *England*.

All Persons neglecting to take the said Oaths, &c. as aforesaid, shall be, *ipso facto*, disabled to enjoy the said Offices, or Employments, or any Profit thereby, and every such Place shall be void. And every Person who shall after such Neglect, execute any of the said Offices, and be thereof convicted in any of the Courts at *Westminster*, or at the Assizes, shall be disabled to sue in Law or Equity, or to be Guardian to any Child, or Executor

or

or Administrator, or capable of any Legacy, or Deed of Gift, or to bear any Office, and shall forfeit 500*l*.

If any Persons, not bred from their Infancy by their Parents in the Popish Religion, and professing themselves Popish Recusants, shall educate their Children, or suffer them to be educated in the Popish Religion, they shall be disabled of Bearing any Office in Church or State; and all such Children so educated shall be disabled of Bearing any such Office, 'till they be reconciled to the Church of *England*, and take the said Oaths; and thereupon receive the Sacrament after the Usage of the Church of *England*.

But this Act shall not make void any Pension granted by the King for valuable Consideration, other than such as relate to any Office, and voluntary Pensions; nor make void any Estate of Inheritance granted to any in Lands or Hereditaments, not being Offices. Nor make void the Grant of any Office of Inheritance, or any Salary for executing thereof, so as the Persons having such Offices appoint their Deputies to execute them; and so as such Deputies take the said Oaths, &c. and are approv'd by the King under his Privy Signer.

Any Person forfeiting any Office by Neglect, may by a new Grant thereof, or of any other Office, hold the same, doing all Things requir'd by this Act; so as such Office be not granted to, and enjoy'd by some other.

The Statute 6, 7, & 8 *W. 3.* enacted, That all Persons who bare any Office, Civil or Military, or receiv'd any Pay, Salary, Fee, or Wages, by reason of any Patent or Grant from the King; or who had any Command, or Place of Trust, from

or

or under the King, or from any of his Predecessors, within the Realm of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, or in the Navy, or Islands of *Jersey, &c.* were in the Chancery, King's Bench, or Quarrer Sessions, to subscribe the Association to stand by King *William* against the Attempts of the late King *James*, and in supporting and defending the Succession of the Crown in the House of *Hanover*.

Every Person aforesaid that shall neglect or refuse to subscribe the said Association to be, *ipso facto*, adjudg'd incapable to enjoy the said Office or Offices, or any Advantage thereby, and such Office to be void: And Persons after such Neglect or Refusal, executing any of the said Offices either in Person, or by Deputy, incurr'd such Forfeitures and Penalties, as if they had neglected or refus'd to subscribe the Oaths and Declaration, 25 *Car. 2.*

By the 13 *W. 3.* all that bear Offices, Civil or Military, receive Pay, Fee, or Wages, by reason of Patents or Grants from the King, or have Command, or Place of Trust from his Majesty, or his Predecessors, or by his Authority, or deriv'd from him, or be in the Service of his Majesty, Prince *George*, or Princess *Anne* of *Denmark*; all Ecclesiastical Persons, Members of Colleges, and Halls, being Eighteen Years of Age; all Persons teaching Pupils; Schoolmasters, Uthers, Preachers and Teachers of separate Congregations, Serjeants at Law, Counsellors, Advocates, Attornies, Solicitors, Proctors, Clerks, or Notaries practising in any Court, are to take the Oath of Abjuration of the Pretender.

All Persons that shall be admitted into any Office, Civil or Military, &c. all Ecclesiastical Persons, &c. Serjeants at Law, Counsellors, Attornies, &c. admitted to Benefices, Offices, or Employments,

ments, are to take and subscribe the said Oath : Neglecting or refusing to take the said Oath, they shall be incapacitated to enjoy and execute, &c. and Executing contrary to this Act, shall be liable to the Disabilities, and Penalty of 500 *l* mention'd 25 *Car. 2.*

But Offices of Inheritance executed by Deputies are excepted out of this Act, provided such Deputies comply in taking the Oaths, and have the King's Approbation.

The Oaths of *Allegiance*, *Supremacy*, and *Abjuration*, as now settled, follow.

*Oath of Allegiance.*

" **I** *A. B.* do sincerely promise and swear, That I  
" will be faithful, and bear true Allegiance  
" to his Majesty King George.

*So help me G O D.*

*Oath of Supremacy.*

" **I** *A. B.* do swear, That I do from my Heart  
" abhor, detest, and abjure, as impious and  
" heretical, that damnable Doctrine and Position,  
" That Princes excommunicated or depriv'd by  
" the Pope, or any Authority of the See of Rome,  
" may be depos'd or murther'd by their Subjects,  
" or any other whatsoever. And I do declare,  
" That no foreign Prince, Person, Prelate, State,  
" or Potentate, hath, or ought to have, any Juris-  
" diction, Power, Superiority, Pre-eminence, or  
" Authority, Ecclesiastical or Spiritual, within this  
" Realm :

*So help me G O D.*



## The Declaration, 25 Car. 2.

" **I** A. B. do declare, That I do believe that  
 " there is not any Transubstantiation in the  
 " Sacrament of the Lord's Supper; or in the Ele-  
 " ments of Bread and Wine, at or after the Con-  
 " secration thereof by any Person whatsoever.

## The Oath of Abjuration.

" **I** A. B. do truly and sincerely acknowledge,  
 " profess, testify, and declare in my Con-  
 " science before God and the World, That our So-  
 " vereign Lord King George is lawful and rightful  
 " King of this Realm, and all other his Majesty's  
 " Dominions and Countries thereunto belonging.  
 " And I do solemnly and sincerely declare, That I  
 " believe in my Conscience, that the Person pre-  
 " tended to be Prince of *Wales*, during the Life of  
 " the late King *James*, and since his Decease, pre-  
 " tending to be, and taking upon himself the Style  
 " and Title of King of *England*, by the Name of  
 " *James* the Third, or of *Scotland*, by the Name  
 " of *James* the Eighth, or the Style and Title of  
 " King of *Great Britain*, hath not any Right or  
 " Title whatsoever to the Crown of this Realm,  
 " or any other the Dominions thereto belonging:  
 " And I do renounce, refuse, and abjure any Al-  
 " legiance or Obedience to him. And I do swear,  
 " That I will bear Faith and true Allegiance to his  
 " Majesty King *George*, and him will defend to the  
 " utmost of my Power, against all traiterous Con-  
 " spiracies and Attempts whatsoever, which shall  
 " be made against his Person, Crown, or Dignity.  
 " And I will do my utmost Endeavours to disclose

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“ and make known to his Majesty, and his Successors, all Treasons, and traiterous Conspiracies, which I shall know to be against him, or any of them. And I do faithfully promise to the utmost of my Power, to support, maintain, and defend the Succession of the Crown against him the said *James*, and all other Persons whatsoever; which Succession, by an Act, intituled, *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, is, and stands limited to the Princess Sophia, Electress and Dutches Dowager of Hanover, and the Heirs of her Body, being Protestants*. And all these Things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense, and Understanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation, whatsoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation, and Promise heartily, willingly, and truly, upon the true Faith of a Christian.

*So help me G O D.*

By 11 & 12 W. 3. Persons educated in the Roman Catholick Religion, not taking the Oaths of Allegiance, &c. shall be incapable of inheriting any Lands by Devise, Descent, &c. and the next of Kin, being a Protestant, to enjoy, &c. And by this Act, Papists are made incapable of purchasing Lands; which last is confirm'd by 1 *Geor.*

Persons refusing to take the Oaths, are adjudg'd Popish Recusants Convict. 6 *Ann.* And a Recusant, besides Disability of enjoying Offices, &c. shall not come to Court without Licence, under the Penalty of 100*l.*

I shall close this Head with the Act of Conformity, 10 Ann. By this Statute it is enacted, " That  
 " if any Person, who hath any Office, Civil or  
 " Military, or who receives any Pay or Salary,  
 " by Patent or Grant from the Queen, or shall receive any Fee or Wages of her Heirs or Successors, or shall have any Place of Command or Trust, in *England*, or in the Navy, or in *Jersey* and *Guernsey*, or shall be admitted into any Employment in the Household; or if any Magistrates of a Corporation either in *England*, *Wales*, or Town of *Berwick upon Tweed*, who by the Acts 13 & 25 Car. 2. or either of them, are obliged to receive the Sacrament; and shall after their Admission into their Offices, or after having such Patent or Grant, or Place of Trust, and during their Continuance in such Office, as aforesaid, be knowingly present at any Conventicle for the Exercise of Religion, at which there shall be ten Persons, or more, assembled, over and above those of the same House, (if it be in a House where any Family dwells) or shall knowingly be present at any Meeting in such House or Place, where the Royal Family shall not be prayed for in express Words, tho' the Liturgy of the Church of *England* is us'd, they shall incur a Forfeiture of 40 *l.* to be recover'd by Action of Debt or Information; and on Conviction, either in the Courts at *Westminster*, or at the Assizes, shall be disabled to hold and enjoy any Office or Employment whatsoever."

" But if after such Conviction and Disability, the Person shall conform to the Church of *England* for one Year, without being present at any Conventicle, and receive the Sacrament at least three Times in the Year, he shall be capable of a new Grant of any Office or Employment:

" And

“ And the Person so conforming, shall at the next  
 “ Term after his Admission into any Office, make  
 “ Oath in Writing, in some Court at *Westminster*,  
 “ or at the next Quarter-Sessions for the County,  
 “ or Place where he resides, of his Conformity to  
 “ the Church of *England*, without being present  
 “ at a Conventicle, for one Year; and that he has  
 “ receiv’d the Lord’s Supper three Times: Which  
 “ Oath is to be there inroll’d.”

And there is a Proviso in this Act, That no Person shall be punishable, unless Oath be made of his Offence before a Judge, or Justice of Peace, within ten Days after the Offence committed, and unless the Prosecution, be within three Months: And this Act shall not make void any Office of Inheritance, so as the Person who enjoys the same, substitutes a sufficient Deputy to execute the Office until he conforms.

But the Statute made this last Session of Parliament repeals the preceding Act, but with this Proviso, That if any Mayor, Bailiff, or other Magistrate of a Corporation, shall resort to, or be present at any publick Meeting for Religious Worship, other than the Church of *England* as by Law Establish’d, in the Gown, or other peculiar Habit, or attended with the Mace, or Ensigns of his Office, that every such Mayor, &c. being thereof convicted, shall be disabled to hold such Office or Employment, and be adjudg’d incapable to bear any publick Office. 4<sup>th</sup> Georg.

The Parliament in former Times had a Right in nominating, placing, and displacing of the Great Officers of the Kingdom, when they corrupted or miscounsell’d the King; of which many Instances may be given. *Pryn.*



The Justices of the King's Bench, and Common Pleas, hold their Offices by Letters Patent, the former in these Words, *Rex omnibus ad quos presentes literæ pervenerint. salutem. Sciatis quod constituimus dilectum & fidelem Robertum Eyre Militem unum justiciariorum ad placita coram nobis tenenda durante beneplacito nostro Teste, &c.* The Chief Baron of the Exchequer is created likewise by Letters Patent, and his Office granted, *Quamdiu se bene gesserit.*

## CHAP. V.

*Of the Laws of the EXCHEQUER and TREASURY; the Courts of Account, Law, Equity, &c. therein: The several Officers and their Duties; Sheriffs Accounts, &c.*

THE Exchequer was at first a general Name, applied to the Place of Management of the King's Treasure, and where it was usually paid in. In early Times, that Part of the Exchequer where the King's Treasure was repositied or issu'd, was call'd *Thesaurus*; and at length the Receipt of the Exchequer acquir'd the Name of *Scaccarium de Recepta*.

Sir Edward Coke observes, That the Exchequer is divided into two Parts, *viz.* Judicial Accounts, called, *Scaccarium Computorum*, and into the Receipt of the Exchequer. *Una origo utriusque scaccarii, superioris scilicet & inferioris, sed quicquid in superiori computatur, in inferiori solvitur.*

Bracton

*Bracton* takes no Notice of the Court of Exchequer; and *Fleta* says only, *Habit & Rex curiam suam & justitios suos residentes ad scaccarium.* But for its Antiquity, some of our best Historians are of Opinion it was erected by King *William* at the Time of the Conquest of this Realm, its Model being taken from the Transmarine Exchequer, establish'd in *Normandy*, long before that Time. And some Persons think there was an Exchequer under the *Anglo-Saxon* Kings; but Mr. *Madox* in his *Treatise of the Antiquity of the Exchequer*, says, "That he could never find the Word *Scaccarium*, or Exchequer, in any Monument or Writing before the Conquest."

In the Reign of *Henry* the First, Son of King *William* the First, there was an Exchequer, which has continu'd ever since. The Judges were at that Time styl'd, *Barones Scaccarii*, and administred Justice to the Subjects. In the second Year of King *Henry* the Third, *William Mareschal* Earl of *Pembroke*, *Peter* Bishop of *Winchester*, *Hubert de Burgh* Chief Justicier, and the King's Council were present in the Exchequer, and adjudg'd *Nicolas de Verdun* to be discharg'd of a Fine, which had been arbitrarily laid on him.

In the first Year of King *Edward* the First, there were present at the Exchequer, *Philip de Eye*, Treasurer, *Hervicus de Borham*, and *Roger de la Leye*, Barons of the Exchequer; in the ninth Year of that Reign, the King's Chancellor, and others of his Council, sat in the Exchequer: And it appears by the Plea-Rolls in the Treasury of the Exchequer, that King *Henry* the Second, and the Third, did several Times sit personally in Judicature: For Example, A Plea or Cause depending between *Henry* the Third, and *Thomas Peverell & alios*, was adjudg'd and determin'd before the King and his Council: A Plea between *James de Audley*, and  
Henry

*Henry de Lacy*, who prosecuted for the King, was debated before the King: And the Cause of *Gilbert de Clare*, Earl of *Gloucester* and *Hereford*, was rehearsed before the King and his Council. And it was agreed, That a Plea which concern'd the King ought to be determin'd before him.

In antient Times the Barons of the Exchequer dealt in Affairs relating to the State, or publick Service of the Crown and the Realm. The Exchequer had Jurisdiction in Civil Causes, or Common Pleas; and was antiently held in the King's Court before the King. It was a Court greatly concern'd in the Preservation of the Prerogative as well as the Revenue of the Crown: At the Exchequer it was the Care of the Treasurer and Barons to see, that the Rights of the Crown were not invaded by such as claim'd Liberties or Exemptions; and to allow or disallow of Liberties or Exemptions so claim'd. And commonly when the King granted or confirm'd Liberties by his Letters Patents, a close Writ directed to the Treasurer and Barons, was wont to issue, reciting the Substance of such Grant or Confirmation, and commanding the Barons to allow thereof.

For the Authority and Dignity of the Court of Exchequer, antiently it was esteem'd so great, that the Acts thereof were not to be examin'd or controll'd, in any other of the King's ordinary Courts of Justice. The Exchequer was a great Repository of the King's Records. Thither the Records of the Court holden before the King, of the Court of Common Bench, and of the Justices in Eyre were brought, to be laid up in the Treasury there; and at this Day we find the antient Rolls and Records of the King's Bench, of the Common Pleas, and of the Justices Itinerant for Common Pleas, repositied and still remaining in that

that Treasury, under the Custody of the Treasurer and Chamberlain of the Exchequer. Writs of the Chancery were sometimes made forth at the Exchequer; Writs of Summons to assemble Parliaments, &c.

The Court of Exchequer has been commonly held at *Westminster*, the usual Place of the King's Residence; but it has been sometimes holden at other Places, as the King pleas'd. In the Reign of King *Stephen* it was held at *Winchester*; about that Time the Earl of *Gloucester*, and *Brien Fitz Count*, examin'd the Accounts of the Treasury at *Winton*. In the Reign of King *John*, the Exchequer was held at *Northampton*, and Allowance was made the Sheriffs of *London* and *Middlesex* for conveying the Rolls and Exchequer of the Barons, &c. from *London* thither. And besides the great Exchequer, King *Henry* the Second had some subordinate Receipts of Revenue, which were call'd Exchequers, at several Places, whereof *Worcester* is often mention'd.

In the Exchequer there are seven Courts. The Court of Pleas; the Court of Accounts; the Court of Receipts; the Court of the Exchequer-Chamber, being the Assembly of all the Judges of *England* for Matters in Law; the Court of Exchequer-Chamber for Errors in the Court of Exchequer; for Errors in the King's Bench; and the Court of Equity in the Exchequer-Chamber. Co. Inst. 4 part, 119.

The immediate Profits of the King, as of Franchises, Lands, Tenements, Hereditaments, Debts, Duties, Accounts, Goods, Chattels, &c. are within the Jurisdiction of the Court of Exchequer. And the King's Attorney may exhibit *English Bills* in the Exchequer for any Matter concerning the King in Inheritance or Profits; and in like Manner any Person



Person that finds himself griev'd in any Cause prosecuted against him on the Behalf of the King, or any Patent by Grant of the King, may exhibit his Bill against the King's Attorney, and such others as are interested in the Cause, to be reliev'd in Equity: In which Case the Plaintiff must attend the King's Attorney with a Copy of his Bill, and procure him to answer the same; and the King's Attorney may call any that are interested; or any Officer or others, to instruct him touching the Making his Answer, so as the King be not prejudic'd thereby, and his Answer is to be put in without Oath.

*Britton*, treating of the Jurisdiction of the Exchequer, says, *A Oier & Determiner tous les causes que touchent nous detts, & auxi a nous Fees, & les incidents choses, &c.* And in three Cases, the Court of Exchequer has Jurisdiction of Common Pleas between common Persons in personal Actions.

As where an Officer or Minister is one of the Parties in any personal Action; any Man that is a Prisoner of this Court, or an Accountant, or any other that ought to have the like Privilege, shall not be sued in any personal Action but in this Court; and he that is a Farmer, or indebted to the King, for the King's more speedy Satisfaction of his Debt or Duty, shall sue his Debtor by a *Quo Minus* in the Exchequer. *Co. Inst. 2 part, 551.*

Persons impeach'd in the Exchequer may plead in their own Discharge. *5 R. 2.* And no Writs, &c. to issue out of the Remembrancer's Office in the Exchequer upon a bare Supposition, but it must be upon just Grounds, on Pain of rendering Damages to the Party vex'd. *1 Jac. 1.* But Processes may

may issue for the Discovery of Tenures, by Order of the Court, notwithstanding this Act.

The Barons of the Exchequer are the sovereign Auditors of *England*; for if a Man assign Auditors to a Bailiff, or Receiver to account, and those Auditors will not allow just and reasonable Allowances, but commit the Bailiff, or Receiver, to Prison, such Prisoner may have an Original Writ, *Ex parte talis*, returnable before the Treasurer and Barons of the Exchequer, for his Relief.

Upon Account in the Exchequer, the Wardrobe-Keeper demanded Allowance for some Gold and Silver Vessels, and certain Jewels, given by the King, *Ore tenus*, to the Queen: And this Gift by Word of Mouth was held void; and a Warrant under the Signet is not sufficient to issue any Treasure of the King out of the Receipt; but it must be under the Great or Privy-Seal. *Bury and Petilian's Case. Anno 4 Ed. 3. Co. Inst. 4 part, 115.*

In the Reign of *Ed. 1.* the Abbot of *Westminster*, with a great Number of his Monks, and others, broke into the Receipt of the Exchequer, and robb'd the King of One hundred Thousand Pounds, which was call'd *Dammum inestimabile*. They were all indicted of the Felony, and committed to the *Tower*; and soon after the Exchequer, for greater Security, was new-built.

In the Exchequer there are several Officers under the Lord Treasurer, for the Management of the Revenue; as the Chancellor of the Exchequer, two Chamberlains, Auditor of the Receipt, Tellers, Clerk of the Pells, Tally-cutter, &c. And under the Barons of the Exchequer, there are the King's Remembrancer, the Lord Treasurer's Remembrancer, the Clerk of the Pipe, Controller of the Pipe, Clerk of the Pleas, Auditors of the Imprest, &c.

The

The *King's Remembrancer* enters in his Office the States of all the Accounts concerning the King's Revenue; all Proceedings upon any penal Statute by Information; upon Bonds and Recognizances taken in the King's Name, and transmitted to the Exchequer; all Assurances of Lands granted to the King are kept here; from hence issues forth Processes to cause all Accountants to come in and render their Accounts; and all Proceedings touching the Court of Equity in the Exchequer, come from this Office.

In the Office of the *Lord Treasurer's Remembrancer*, are made out Processes against Sheriffs, Receivers, &c. also to levy the King's Fee-Farm Rents, &c. All Charters, and Letters Patent, whereupon any Rents are reserv'd to the King, are transcribed and sent into this Office by the Clerk of the Petty-Bag. The Green Wax is certified hither, including Fines, &c. and deliver'd to the Clerk of the Exchequer. The States of all Imprest Accounts, &c. are also enter'd in this Office, as well as in the Office of the King's Remembrancer.

The *Clerk of the Pipe* (instituted, as Sir *Edward Coke* tells us, from a Conduit or Conveyance to the Cistern of Treasure) makes out the Leases of the King's Lands, by Warrant from the Lord Treasurer and Chancellor of the Exchequer, or Lords Commissioners of the Treasury: All Accounts of Sheriffs, &c. are made up by the Clerk of the Pipe, and he gives the Accountants their *Quietus est*: All Accounts, which pass the Remembrancer's Office, are brought to this Office, and Debts thereon due from any Person, are put down in the great Roll of the Pipe; and the Controller issues out a Writ, call'd, *The Summons of the Pipe*, for Recovery thereof. All Tallies which vouch Payments are examin'd and allow'd by the Chief Secretary

condary of the Pipe. The Clerk of the Pipe hath in his Office under him eight Attornies, the two first whereof are Secondaries.

In the Office of the *Clerk of the Pleas*, the Officers of the Exchequer, and other Persons privileged, the King's Debtors, &c. are intitled to their privilege of Pleading, and being impleaded, with relation to all Matters at Common Law, and the Proceedings are accordingly by Declaration, &c. This Privilege is granted that the Officers may not be taken from their Attendance in Court.

The *Clerk of the Estreats* receives the Estreats every Term, or Extracts out of the Office of the Remembrancer, and writes them out in order to be levied, &c.

*Auditors of the Imprest*, have the Charge of auditing the great Accompts of the King's Customs, Naval and Military Expences, of the Wardrobe, Mint, &c. And there are Auditors of the Revenue, who audit all Accompts of the King's Revenues, and Taxes given by Act of Parliament.

In the Exchequer where the Royal Revenue is managed, there is next the Lord Treasurer, a *Secretary of the Treasury*; and the *Chancellor of the Exchequer*, who is an Officer of great Authority, and has a principal Power as well in the disposing of the King's Revenue, as in the Exchequer Court: And he hath the Custody of the Exchequer-Seal.

The two *Chamberlains of the Exchequer* have in their Custody Leagues and Treaties with Foreign Princes, many ancient Records, the two famous Books of Antiquity, called *Doomsday*, and the *Black Book* of the Exchequer: The former was called *Doomsday*, as it contains the Tax Book of all England, an Account of all the Cities, Towns, Villages, Lands, &c. and all Persons possessing the same,



same, so that the King could not be liable to any Deception, but Judgment was given according to that Book. It was made by *William* the Conqueror, and was six Years in composing. The Standards of Money, and Weights and Measures are likewise kept by the Chamberlains of the Exchequer.

The *Auditor of the Receipts* draws all Orders for issuing forth Money by Vertue of Privy Seals, to be sign'd by the Lord Treasurer; and also makes out Debentures to Persons entitled to Fees, Annuities, or Pensions from the King, and directs them for Payment to the Tellers: He files the Bills of the Tellers, whereby they charge themselves with Money received; receives the State of the Accompts of each Teller daily, and weekly certifies the State of the whole to the Lord Treasurer or Commissioners of the Treasury, who present an Estimate thereof to the King. And every half Year he makes an Extract of the whole Accompts, one Transcript whereof he delivers to the Lord Treasurer, and another to the Chancellor of the Exchequer. He keeps the Lord Treasurer's Key of the Treasury.

Next to the Auditor, are the *Four Tellers of the Exchequer*, whose Office is to receive all Money due to the King, &c. to pay all Money by Warrant of the Auditor of Receipts; when they receive Money, they throw down their Bills through a Pipe into the Tally-Court, where the Auditor's Clerk receives the same, and writes the Words of the Bill upon a Tally, which being entered by the Clerk of the Pells, the Tally is cloven by the two Deputy Chamberlains, and each part examined; after which one Part is delivered the Party, and the other preserved in the Exchequer. A Teller of  
the

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the Exchequer is esteemed a Post fit for a Nobleman.

The *Clerk of the Pells* enters the Tellers Bills on a Skin of Parchment, and all Receipts and Payments for the King. In the Tally-Court attend the two Deputy Chamberlains, and the Tally-cutter.

A Tally is the King's Acquittance for Money paid or lent, and has written on it Words proper to express on what occasion the Money is received.

To the *Marshal* is committed the keeping of the King's Debtors during the sitting of the Term; and if they do not make Satisfaction of the King's Debts, they are to be further imprisoned. This Officer appoints Auditors to Sheriffs, Collectors, &c. for taking their Accompts.

By the Statute 5 R. 2. it is enacted, That no Clerk of the Pipe, Remembrancer, Controller, Clerk of the Pleas, Auditor, or other chief Officer of the Exchequer shall be made, but out of such Persons as are learned in the Law, or very skilful in the Business of the Exchequer.

The Exchequer is the true Center into which all the King's Revenue and Profit ought to fall: All Accompts to the King are to be upon Oath, and it is most for the King's Interest to have them taken in the Court of Exchequer, and not by Commission. The Keeper of the Wardrobe is to make his Accompt once in the Year in the Exchequer: And the Treasurer of *Ireland* is likewise to account yearly in the Exchequer of *England*; but the Treasurers of the King's Chamber are only accountable to the King, and not in the Court of the Exchequer. *Co. 4 Inst. 113.*

The Statute 51 H. 3. requires all Sheriffs, Bailiffs, Escheators and other Officers to account in the Exchequer before the Treasurer and Barons;  
and

and the *Monday* after *Michaelmas*, and after the *Utas* of *Easter*, they are to pay in their Farms, Rents, Issues, &c. at which Times they are to be ready to render their Accompts. About the Feast of *St. Margaret*, before the Close of the Exchequer, Search is to be made whether any Sheriff or Bailiff have failed to account that Year, and if any have made a Failure, a Remembrance thereof shall be made in the Roll; and if it be a Sheriff, his Accompt shall be first heard after *Michaelmas*; but if he be a Bailiff, he shall be summoned or distrained to account at a certain Day. By this Act likewise all Justices, Commissioners, &c. are obliged to deliver into the Exchequer yearly after *Michaelmas*, the Estreats of Fines and Amerciaments taxed before them.

By 10 *Edw. 1.* the Bodies of Shires are to be written in a certain Annual Roll, and read over every Year upon the Accounts of Sheriffs: In these Annual Rolls shall be inserted the Profits of Counties, Cities, Boroughs, &c. whereof there is Answer yearly made in the Exchequer. In them likewise shall be contain'd all Debts, &c. whereof there is a Prospect of Payment; and of desperate Debts a Roll shall be also made, and read upon the Sheriff's Account, and those whereof he is answerable, shall be written in the Annual Roll, and there shall be acquitted.

Two Knights in every County are to be present at the Delivery of Tallies to Sheriffs, to be allowed upon their Accompts, which Tallies are to be delivered by Indenture betwixt the Knights and the Sheriffs, and the Knights are to transmit their Part to the Exchequer. Inquisitors are to be appointed in every County, to enquire into Debts, what Money paid, and Sums in Arrear, &c.

The Statute 6 H. 4. directs a Commission under the Great Seal to be sent with the Tenor of the Accompts of Sheriffs, Escheators, Controllers, and other the King's Officers, to the most discreet Persons in the several Counties, to enquire and certify the Profits due to the King, Money fraudulently concealed, &c. and such Sheriffs, &c. being convicted of Breach of Trust, or other Fraud, they shall forfeit treble Value, and be imprisoned.

By 15 Edw. 2. All Fines are to have Writs, and Fines of a County for the whole Year are to be sent into the Exchequer, and entred in the Estreat of themselves in one Place, in order as they are entred in the Chancery-Rolls: Next to them shall be entred Charters, Letters Patents, and Commissions in which any Rent is due to the King, or any Accompt to be made; then the Names of all such as shall be assigned that Year, to enquire of Fines, Amerciaments, or other Profits arising to the King, to the Intent they may be sent to for the Estreats thereof: And Justices of both the Benches, the Steward of the King's House, &c. by this Act are in like manner yearly to deliver their Estreats into the Exchequer.

Fines and Amerciaments in ancient Times amounted to great Sums *per Annum*, and were a very considerable part of the Crown-Revenue: But Fines in those Days arose in more various ways abundantly than of late Years, for besides those in Criminal Matters, Fines were usually paid for Liberties, Licences of several sorts, for Benevolence, Protection, Seisin of Lands, Offices, Trade, &c.

Formerly there were three sorts of Aid due to the Crown from the immediate Tenants of the Crown of Common Right, or by reason of Seigniorie; to wit, Aid to make the King's eldest Son a Knight; to marry his eldest Daughter, and  
to



to ransom his Person when taken in War. And in the Reign of King *Henry* the Second, an Aid was levied by that King for the Marriage of his Daughter *Maud* to the Duke of *Saxony*; it was levied by Knights Fees, and in *Norfolk* the Earl of *Clare* paid fourscore and fourteen Pounds for his own Knights Fees, which shews it was a very heavy Tax in those early Days.

About the Time of the Conquest there was very little Money in Specie in the Realm; then the Tenants or Knights Fees answered their Lords by military Services; and till the Reign of King *Henry* the First, the Rents or Farms due to the King, were generally rendered in Provisions and Necessaries for his Household: But in this Reign the same were changed into Money, and afterwards in succeeding Times the Revenue of the Crown was answered or paid into the Exchequer chiefly in Gold and Silver.

By a late Act, when any Money shall be brought into the Receipt of the Exchequer, the Officers attending are without Delay to receive the same, weighing it in entire Sums, or otherwise (which Method of weighing is of very ancient Practice, for at the Time of the Conquest Payments were made in the Exchequer, *ad scalam*, by Weight; as well as in Money, *numero*, or by Tale) and on Receipt thereof, they shall make due Entry, and throw down a Bill to the Tally-Court, whereby a Tally may be duly levied. 8 & 9 W. 3.

No Teller is to charge himself by Bill with the Receipt of any Money in the Exchequer, but when the Officers of the Tally-Court are there present; and no Teller, his Clerk, or Substitute, after the Bills are thrown down into the Tally-Court, shall lend, pay, or otherwise dispose of the said Money out of his Office, without an Order for the same made

made forth by the Auditor, recorded by the Clerk of the Pells, and taking a Receipt to discharge the King according to ancient Course, under the Penalty of forfeiting double the Sum paid out, and Forfeiture of Office, Disability, &c.

None of the Monies which are or shall be in the Receipt of the Exchequer, shall be thence paid or issued, but in Pursuance of some sufficient Grant under the Great Seal, or by Verue of sufficient Authority under the Privy Seal, or pursuant to some Act of Parliament.

The Money in the Receipt of the Exchequer is to be kept in Chests under three different Locks and Keys, the Tellers to keep one, the Clerk of the Pells one, and the other to be kept by the eldest of the two Deputy Chamberlains. The Clerk of the Pells and Deputy Chamberlains are every Morning to cause the respective Chests to be opened in their Presence, and so much Money to be taken out and left with the Tellers, as will answer the Orders directed to be satisfied that Day, and the rest to be safe locked up again. And no Money shall be taken out of the said Chests but in the Presence of the respective Tellers, the Clerk of the Pells, and Deputy Chamberlain, or in Case of Sickness or Absence, with Leave of their chief Clerks.

The Auditor of the Receipt, or his chief Clerk, shall at least once a Month visit every Teller's Cash, and by numbering of the Bags, opening some of them, or weighing or telling the Money, see that the Tellers have in real Money the Remains where-with he charges them; and once in three Months at least examine the Teller's Vouchers for the Payments which he allows them.

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By the Statute 5 & 6 W. & M. Officers of the Receipt of the Exchequer, are allowed to receive for their Fees one Penny in the Pound, for all Sums issued out for the Payment of Land Forces Garrisons, and other Charges incident to the Army, to be distributed in such Proportion as the Lord Treasurer or Commissioners of the Treasury shall appoint.

By 7 & 8 W. 3. the King or his Officers in the Exchequer were enabled to borrow Money at 7 per Cent, or upon the Credit of Bills payable on Demand, with Interest not exceeding 3 d. per diem for every 100 l. By 8 & 9 W. 3. Interest after the Rate of 3 d. per Day for every 100 l. was allowed on Exchequer Bills: But by 12 W. 3. the Interest on such Bills was lowered to 4 d. per Day; and the 12 Anne, sunk it to 2 d. per diem for every 100 l. The Statute 5 Anne, empowered the Lord Treasurer to cause Exchequer Bills to be made out of any Sum not exceeding 150,000 l. and the Bank was allowed 4 l. 10 s. per Cent. for circulating. Forging Exchequer Bills, or the Indorsement thereon, is made Felony.

I have already observed, that Sheriffs are to account in the Exchequer; I shall next proceed to Allowances made Sheriffs on their Accompts, the manner of passing them, &c. And first by the Statute 34 H. 8. Sheriffs, upon their Accompts, were to have an Allowance for executing the King's Writs, levying of Estreats, coming to the Exchequer to account, and Expences at the Assizes, Gaol deliveries, &c. so as the same did not exceed 342 l. 6 s. 8 d.

But the 2. and 3 E. 6. repeals the Act 34 H. 8. with respect to such Allowances; and Sheriffs are by this Act to have Tallies of Reward and other Allowances, as before the making of the said Statute;

rate; where no Tallies of Reward have been used to be stricken, the Sheriffs shall be allowed their Expences upon Petition, with a Bill thereof thereunto annexed, proved on Oath. And Sheriffs shall be discharged of all such Farms, Profits, Sums of Money, &c. as they cannot levy.

Sheriffs are to have Allowance upon their Accompts of Things casual. And by 13 & 14 Car. 2. No Sheriffs shall be charged in Accompt to answer any illeivable Seizure, Farm, Rent, Debt, &c. and no Process shall issue to any Sheriff for levying any Rent, which cannot be explained by the Particulars, or hath been unanswered for forty Years.

The Remembrancers are to enrol and certify such Debts as any Sheriff shall be charged with by Returns of any Process, and of all Fines and Amerciaments which shall be imposed by the Court of Exchequer upon any Sheriff for Contempts or Neglects: And such Debts, Fines and Amerciaments shall be delivered by the first Day of the next Term after such Returns made, or Fines and Amerciaments imposed, that they may be all charged in the Sheriff's Accompt, and comprehended within his *Quietus est*.

When any Sheriff shall have his *Quietus*, he shall be absolutely discharged, unless called in Question within four Years.

The Statute 3 Geo. ascertains the Fees to be taken on passing the Accompts of Sheriffs: And empowers the Lord Treasurer, Commissioners of the Treasury, &c. to call before them the Treasurer's Remembrancer, and the Clerk of the Pipe in the Exchequer, and to reduce the several Sums wherewith Sheriffs stand charged, to such reasonable and moderate Sums as to them shall seem just, &c.

The yearly Sum of four thousand Pounds, is by this Act to be set apart at the Receipt of the Exchequer,



quer, out of such Funds as shall be charged by Act of Parliament, for the Payment to Sheriffs of Counties (to enable them to pass their Accompts, and obtain their respective *Quietus*) of the several Sums following, *viz.*

To the Sheriff of the County of Bedford, 93 l. of Berks and Bucks, each 96 l. Cambridge and Huntingdon, 95 l. Cheshire, 62 l. Cornwall, 102 l. Cumberland, 90 l. Derby, 93 l. Devon, 106 l. Dorset, 101 l. Essex, 108 l. Gloucester, 98 l. Hereford, 94 l. Hertford, 93 l. Kent 108 l. Lancaster, 67 l. Leicester, 94 l. Lincoln, 101 l. Middlesex, 119 l. Monmouth, 89 l. Norfolk, 101 l. Northampton, 96 l. Northumberland, 91 l. Nottingham, 95 l. Oxon, 97 l. Rutland, 69 l. Salop, 98 l. Somerset 112 l. Southampton, 101 l. Stafford, 95 l. Suffolk, 102 l. Surrey, 90 l. Sussex, 90 l. Warwick, 93 l. Wilts, 104 l. Worcester, 98 l. and York, 150 l.

The Welch Counties, Anglesey, Brecon, Cardigan, Carmarthen, Carnarvon, Denbigh, Flint, Glamorgan, Merioneth, Montgomery, Pembroke, and Radnor, 30 l. each, and Westmorland, 40 l.

The several Sums above are to be paid the first Day of *Michaelmas* Term.

Before I quit the Statute 3 Geo. it may not be amiss to take some Notice of the Oath required by that Act to be taken by all Sheriffs on their Establishment in their Offices; and as the same is very particular, and sets forth the Duty of those Officers in all respects, I shall insert it at large.

#### *Oath of Sheriffs.*

**I** *A. B.* do swear, That I will well and truly serve the King's Majesty in the Office of Sheriff of the County of, &c. and promote his Majesty's Profit in all Things that belong to my Office,

## The Gentleman's Lath.

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“ Office, as far as I legally can or may ; I will truly  
“ preserve the King's Rights, and all that belongs  
“ to the Crown, I will not assent to decrease, lessen,  
“ or conceal the King's Rights, or the Rights of  
“ his Franchises ; and whensoever I shall have  
“ Knowledge that the Rights of the Crown are  
“ concealed or withdrawn, be it in Lands, Rents,  
“ Franchises, Suits, or Services, or in any other  
“ Matter or Thing, I will do my utmost to cause  
“ them to be restored to the Crown ; and if I may  
“ not do it my self, I will certify and inform  
“ the King thereof, or some of his Judges ; I will  
“ not respire or delay to levy the King's Debts for  
“ any Gift, Promise, Reward, or Favour, where  
“ I may raise the same without great Grievance  
“ to the Debtors ; I will do Right, as well to poor  
“ as to rich, in all Things belonging to my Office ;  
“ I will do no Wrong to any Man for any Gift,  
“ Reward or Promise, nor for Favour or Hatred ;  
“ I will disturb no Man's Right, and will truly  
“ and faithfully acquit at the Exchequer all those  
“ of whom I shall receive any Debts or Duties  
“ belonging to the Crown ; I will take nothing  
“ whereby the King may lose, or whereby his  
“ Right may be disturbed, injured, or delayed ;  
“ I will truly return, and truly serve all the King's  
“ Writs, according to the best of my Skill and  
“ Knowledge ; I will take no Bailiffs into my Ser-  
“ vice, but such as I will answer for, and will cause  
“ each of them to take such Oaths as I my self do,  
“ in what belongs to their Business and Occupa-  
“ tion ; I will truly set and return reasonable and  
“ due Issues of them that be within my Bailiwick,  
“ according to their Estates and Circumstances,  
“ and make due Pannels on Juries of Persons able  
“ and sufficient, and not suspected, or procured,  
“ as is appointed by the Statutes of this Realm ;

P 3

I have

" I have not sold or let to Farm, nor contracted  
 " for, nor have I granted or promised for Reward  
 " or Benefit, nor will I sell, or let to Farm, nor  
 " contract for, or grant for Reward or Benefit by  
 " my self, or any other Person for me, or for my  
 " Use, directly or indirectly, my Sherifffwick, or  
 " any Bailiwick thereof, or any Office belonging  
 " therunto, or the Profits of the same to any  
 " Person or Persons whatsoever; I will truly and  
 " diligently execute the Laws and Statutes of  
 " this Realm; and in all Things well and truly  
 " behave my self in my Office, for the Honour  
 " of the King, and the Good of his Subjects, and  
 " discharge the same according to the best of my  
 " Skill and Power. "

*So help me GOD.*

No Sheriffs, Under-Sheriffs, &c. are to take  
 more for serving an Extent or Execution, than 12 *d.*  
 for every Pound not exceeding 100 *l.* and 6 *d.*  
 for every Pound over and above the said Sum of  
 100 *l.* under the Penalty of yielding treble Da-  
 mages, and forfeiting 40 *l.* Stat. 29 *Eliz.*

I now come to a Conclusion of this Chapter,  
 which I shall do with observing that all judicial  
 Proceedings at Law in the Exchequer, are *Coram*  
*Baronibus*; but the Court of Equity, is *Coram*  
*Theſaurario, Cancellario & Baronibus*. And in re-  
 spect to the Court of the Exchequer, I shall end  
 (as Sir Edward Coke does) with an old *Latin*  
 Verse engraved on the Exchequer Wall.

*Ingrediens Fani, rediturus es æmulus Argi.*

C H A P.

CHAP. VL

Of Commissioners of the CUSTOMS; the Statutes relating to, and first Rise of Customs, &c. and the Business and Salaries of the respective Officers.

BEFORE I treat of Commissioners of the Customs, I shall examine into the Nature of Customs, their Rise and Original, and the several Acts of Parliament by which they have been granted in all Ages.

Of Customs, including all manner of Tolls, Impositions. *Bracton* says, *De novis Consuetudinibus levatis sive in Terra, sive in Aqua, quis eas levavit, &c.* And Customs, my Lord *Coke* says, were called *Novae consuetudines*, by Reason they were new Exactions in regard to Tolls of Antiquity.

Customs were anciently distinguished by *Custuma Magna*, & *Custuma parva*. *Custuma Magna* was by Act of Parliament granted to King *Edw. I.* his Heirs and Successors, for Transportation of Wools, Woolfels, and Leather, *viz.* for every Sack of Wool containing 36 Stone, every Stone being 14 Pounds, half a Mark; for every three hundred of Woolfels, half a Mark; and for Leather, 13 s. 4 d. a Last. The Act runs thus: *Praelati Magnates, & tota Communitas concesserunt quandam novam consuetudinem nobis de lanis, pellibus & coriis*  
P 4 *viz.*



*viz. de sacco Lanae dimid' Marc. de 300 pelli-  
bus dimid' marc' & de Lasta Coriorum unam Marcam.*

These Customs had their Creation by Authority of Parliament. And Anno 6 E. 3. it was resolved, that no new Customs could be levied, nor ancient increased, but by Authority of Parliament. Co. 2 Part, 60.

Pursuant to that Resolution, several Statutes down to this Time have been made for laying Duties called *Customs*, and regulating the Management of this great and profitable Revenue.

And first, 14 Edw. 3. enacts, That a Mark shall be paid as Custom for every Sack of Wool and of Woolfels, and for Leather shall be paid the ancient Custom. The Sack of Wool by this Act was to contain twenty-six Stone, and each Stone fourteen Pounds: And for every Sack of Wool exported, four Nobles worth of silver Plate shall be imported and brought to the King's Exchange, where the Party shall receive his Money for the same.

By 3 H. 7. Every Merchant importing any Goods into this Realm, having entered the same with the Customer of the Port where he lands it, and paid all Duties, if he be desirous to transport them to some other Port, shall obtain a Certificate under the Customer's Seal, expressing the Nature, Length, Weight, Value, &c. of such Goods, to be directed and delivered to the Customers of the Port where they are to be conveyed, before they be discharged, on pain of Forfeiture of the Goods, &c. And by this Statute no Merchant was to make Entry of any Goods in the Customers Books, but only in the Name of the right Owner. In the Reign of Henry the Eighth, Mention is made of a Custom on Cloth of Gold, Silver, Velvet, &c.

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The Statute 1 *Eliz.* directs, That no Person shall lade or unlade into, or out of any Ship or other Vessel, any Goods, Wares or Merchandize whatsoever (Fish taken by *English* Men excepted, and unless it be upon a Leak or Wreck) to be imported or exported, but in the Day-Time only, *viz.* from the first of *March*, till the last of *September*, between Sun-rising and Sun-set, and from the last of *September*, to the first *March* between the Hours of seven and four; and that in such Places as the Queen shall by Commission assign for that Purpose: Lading or Unlading otherwise, to forfeit the Goods, or the Value thereof.

The Places so to be assigned were declared to be *London, Bristol, Southampton, Westchester, Newcastle*, and all other Places where Custom-House Officers were resident, *Hull* excepted.

The Master or other Person having the Charge of the Vessel, shall acquaint the Customer or other Officer with the Times of his Lading and Departure, as also what Persons are to have Lading with him, and answer such Questions concerning his Lading, as shall be demanded upon Oath or otherwise, under the Penalty of 100 *l.* The like to be observed on the Importation of Merchandize, under the like Penalty.

By this Act a Duty is granted on sweet Wines, &c. and none shall enter any Goods in the Customer's Books, but in the right Owner's Name, on pain of forfeiting the Value.

By 12 *Car. 2.* were granted to the King during his Life, the great Subsidy called Tonnage on Wine imported, and Poundage for Merchandize exported: But Herrings and other Sea Fish may be transported in Vessels of the Subjects of this Realm, free from Duty. The Custom Duty of Tonnage and Poundage, have been granted to King *James*,  
King

King *William* and Queen *Anne*, likewise for Life by subsequent Acts; and is one of the most considerable Branches of the Royal Revenue.

If Goods are put into any Boat or Vessel to be carried beyond Sea, or brought from beyond Sea, and unshipped to be landed, the Duties not being paid or tendered to the Collector, or his Deputy, nor agreed for in the Custom-House, the same shall be forfeited, one Moiety to the King, the other to the Seizor, &c.

The 12 *Car. 2. c. 19.* enacts, That if any Person shall cause any Goods for which Customs are to be paid, to be landed or conveyed away without Entry made, and the Collector of the Customs agreed with; the chief Magistrate of the Port, or of the Place next adjoining, may at any Time within a Month after the Offence committed, issue out a Warrant for any Person, with the Assistance of a Constable, &c. to enter the House in the Day-time, where the Goods are suspected to be concealed, and in Case of Resistance, to break open the House and seize the Goods. But there must be Information on Oath first given.

By 13 and 14 *Car. 2.* for securing the Customs, no Vessel outward bound, shall take in any Goods of the Product of *England*, till the Persons taking Charge of the same have entred such Vessel, the Name of the Commander, Burthen, &c. and to what Port she is designed, with the Collector of the Customs; and before Departure shall bring the Contents of the Lading under the Hands of the Laders, and answer Questions on Oath, under the Penalty of 100 *l.* Ships arriving from beyond Sea, the Masters are likewise to make a true Entry upon Oath of the Lading, Goods, Ship, &c. under the like Penalty. And if any concealed Goods are found after clearing, for which the Duties on Im-

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portation have not been paid, the Master or other Person taking charge of such Vessel, shall forfeit also 100 l.

No Vessel employed for the Carriage of Letters and Pacquets, shall export or import any Goods (unless in Cases allowed by the Officers of the Customs) on pain of 100 l. to be paid by the Master, with the Loss of his Place, and all Goods found aboard such Vessel shall be forfeited.

No Vessel shall be above three Days coming from *Gravesend* to the Place of her Discharge in the *Thames*, without touching at any Place between *Gravesend* and *Chester's Key*, except it be in a Case of Necessity to be allowed by some of the principal Officers of the Customs: And if Keepers of Wharfs, Keys, &c. or their Servants, land or ship Goods without the Presence of some of the Officers of the Customs, they shall forfeit 100 l. And if any Goods shall be laden into any Boat, to be carried aboard any Vessel outwards bound, or taken out of any Vessel arriving from foreign Parts without a Warrant and the Presence of an Officer, such Boat shall be forfeited, and the Master of the Ship consenting to it, to forfeit the Value of the Goods.

Car-men or other Persons assisting in taking up, landing, shipping, or carrying away such Goods, &c. shall be committed by a Justice of Peace's Warrant till they find Sureties for their Good Behaviour, or be discharged by Order of the Lord Treasurer, &c. and for the second Offence to be committed for two Months, or till they pay 5 l. for the Use of the King. And if any Person counterfeit, raze, or falsify any Certificate, Return, &c. or other Custom-House Warrant, he shall forfeit 100 l.

If



If any Person shall resist, hinder, affront, or abuse any Officer of the Customs, or his Deputy, in the Execution of his Office, he shall be committed till the next Quarter Sessions, where he may be fined, not exceeding 100 *l.* and he is to remain in Prison till discharged by Order of the Exchequer, or he shall make a Discovery of the Person who employed him.

The Statute 1 *Jac.* 2. *c.* 4. for Repairs of the Navy, and providing Naval Stores, &c. grants a Duty on Tobacco and Sugar imported. Importers not permitting Officers to make a Search, and to take an Account of the Tobacco, are liable to a Forfeiture of 100 *l.* And Goods are to be entred in the true Importers Names, on Pain of forfeiting double Duty.

By 1 *Jac.* 2. *c.* 5. a Duty is granted on Silks, Callicoes, and *Indian* Linnen imported; and also on Brandy: The Duties to be raised in such manner, and under such Penalties as are mentioned in the Act of Tonnage and Poundage, and the Orders thereunto annexed: And by the Book of Rates, 5 *l.* *per Cent* is allowed to the Merchant out of the Subsidy for Poundage. No Brandy shall be imported in any Cask, not containing 60 Gallons on Pain of Forfeiture, or the Value thereof. In this Act there was a Clause enabling the King to borrow 400,000 *l.* and the Lenders to have Tallies for the same, and an Order for Re-payment with Interest after the Rate of 8 *l.* *per Cent*.

The 1 *W. & M.* imposes a Duty on Coffee, Tea, and Chocolate, &c. If any of the said Commodities shall be unshipped before the Duties paid, or tendred, or the Customs agreed, they shall be forfeited. Merchants having paid the Duties, transporting them in six Months, to be repaid two Thirds of the Duty.

By

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By 2 *W. & M.* a Duty is given on Deal, Timber, and other Wood, Hempseed, Hops, Pepper, Grocery Wares, Iron, Flax, Glass, Tallow, Bever-Wool, Olive Oil, Paper, Liquorice, Soap, Earthen Ware, Starch, Allom, Brimstone, Tin, &c. imported: These Duties to be raised, collected and paid in the same manner, and under such Penalties and Forfeitures as are mentioned in the Act of Tonnage and Poundage, 12 *Car. 2.* Any Persons may advance Money to their Majesties upon the Security of this Act at 8 *per Cent.*

By the 4 & 5 *W. & M.* Duties are granted on the following Goods and Commodities imported, *viz.* Amber Beads, Anchovies, Books, Lamp-Black, Brass wrought, Buckrams, Hair Buttons, Carpets, Lustrings, *Scotch* Coals, walking Canes, Copper, Cotton, Elephants Teeth, Flax, Flannel, Frize, Furs, Gold and Silver Wire, Goats Hair, Hides, Hemp, Jewels, Leather, Madder, Pitch, Plate, Rice, Rosin, Salt, Silk-thrown, Tar, Ticking, Tapestry, Dying-Wood, Bees Wax, &c.

The Importers giving Security at the Custom-House, shall have twelve Months Time for paying the Duties, by four Quarterly Payments: And for ready Money paid 10 *per Cent.* to be abated. And if such Goods be again exported within a Twelve-month, the Duty shall be repaid, or the Security vacated, for so much as shall be exported.

In this Act there is a Clause, declaring it lawful to lend and advance to their Majesties, upon the Credit of this Act, any Sum not exceeding 500,000 *l.* and to receive for Interest 8 *l. per Cent. per Annum.*

The 6 *W. & M.* only continues the Subsidy of Tonnage and Poundage, and other Duty payable for Merchandize granted to King *Charles* the Second, in Trust and Confidence of their Majesties guarding

guarding and defending the Seas against all Persons who shall attempt to invade this Realm, or disturb the Trade and Commerce thereof.

By 6 & 7 W. 3. Towards Satisfaction of the Debts due for Transport-Service for the Reduction of Ireland, &c. additional Duties were granted on Coffee, Tea, Chocolate, Cocoa Paste, Currans, Cinnamon, Cloves, Mace, Nutmegs, Pictures, &c. imported. If the Importer of any such Goods, being a Native of this Kingdom, shall within twelve Months, or an Alien within nine Months, export again any Part thereof, he shall be repaid two thirds of the Duties by him paid by Vertue of this Act, making Oath that the said Goods are really to be exported for Parts beyond the Seas, and not to be re-landed in England.

And by the Act of Tonnage and Poundage, if Goods shipped to be carried to Sea, are landed at any other Place of this Realm without a Warrant from the Officers of the Customs, the same shall be forfeited.

The 7 & 8 W. 3. c. 10. continues the Duty on Tobacco and Sugar, &c. the Management of the Duties on Tobacco, to be conformable to the Methods and Rules of the Customs. 1500,000 *l.* was borrowed on the Security of this Act at 6 per Cent.

By a late Act an Allowance of 8 per Cent is to be made the Merchant at Importation, out of the Duties on Tobacco, instead of the former Allowances. And for prompt Payment of Duty, he shall be allowed 10 per Cent. Discount.

By 7 & 8 W. 3. c. 20. additional Duties are granted on French Wines, Drugs, &c. And by 9 & 10 W. 3. over and above Tonnage and Poundage, and all additional Duties, another Subsidy called Tonnage is granted.

The 11 & 12 W. 3. c. 3. lays additional Duties on Wrought Silks, Bengals, and Stuffs of the Manufacture of *Persia, China, or India*, and all Callicoes, &c. imported. And by 11 & 12 W. 3. c. 10. Such Goods imported are prohibited to be worn in *England*; and to be exported again. If they are not entred, or if they are mix'd with others for Sale, they shall be forfeited, and the Penalty of 500 *l.*

By 2 *Anna*, c. 9. a Subsidy of Tonnage is granted over and above Tonnage and Poundage granted by 9 W. 3. for all Wines imported for three Years. Merchants shall have eighteen Months from the Entry inwards of Tobacco, Sugar, Ginger, Pepper, Dying-Wares, Drugs, &c. to export the same. In Cases where the Oath of the Importer or Exporter is required to obtain a Drawback or Allowance for Foreign Goods, the Oath of the Agent or Husband of any Company trading by a Joint Stock, and the Oath of a known Servant of a Merchant employed in the making his Entries, and paying his Custom, shall be sufficient. The Money arising by this Act to be paid into the Exchequer, and 300,000 *l.* to be lent on it at five per Cent.

The 4 *Anna*, grants the Duties on Wines, &c. imported, over and above the Subsidy of Tonnage and Poundage, for 98 Years. The Money arising by this Act were to be a Fund for Payment of Annuities for 99 Years, bought at fifteen Years and a half's Purchase. And the Sum to be raised was to be 2,855,761 *l.* towards carrying on the War, &c.

By 5 *Anna*, Tonnage and Poundage, and Duties upon Wines and Merchandizes are continued. Any Persons Natives or Foreigners may lend her Majesty on the Credit of this Act, any Sum not exceeding



ceeding 822,381 *l.* and the Lenders shall have Interest at 6 per Cent.

Every Person who shall clandestinely import any wrought Silk mix'd with Gold or Silver, or other Materials, and their Assistants shall forfeit 200 *l.* for every Offence, over and above other Penalties to which the same are liable; and the Persons in whose Custody such Silk is found, or who offers the same to Sale knowing thereof, or who shall conceal the same to prevent the Forfeiture, above the Loss of the Silks shall forfeit 100 *l.* one Moiety to the Crown, the other to the Person suing, to be recovered by Action of Debt, Bill, or Information in any of the Courts at *Westminster*. Stat. 6 *Annæ*.

The next Act is 7 *Annæ*. By this Statute the Duties on Wines and Vinegar granted by King *James* the First, the Duties on Tobacco granted by *James* 2. The Duties on *East India* Goods, &c. granted 2 *W. & M.* are made liable to the Payment of 645,000 *l.* borrowed by this Act, at 6 per Cent.

By 8 *Annæ*, for raising 500,000 *l.* by way of Loan, a Duty was granted on Wax Candles imported, &c. and on all Candles made in *England*. Candles landed without Entry made at the Custom House, &c. and before the Duty paid, or without a Warrant for the Landing, signed by the proper Officer of the Customs, shall be forfeited. Persons making Candles for Sale are to give Notice in writing at the Office of Excise of their melting Houses, and all Coppers, Moulds, &c. under the Penalty of 50 *l.* to make true Entries in writing of all Candles made, &c. on Pain of 20 *l.* Makers of Candles concealing, or carrying away Candles without giving Notice to the Officer; or obstructing any Officer in the Execution of the Act, to forfeit 20 *l.*

These Duties on Candles are continu'd for ever. And the Duties on Wines, Tobacco, *India* Goods, Whale-Fins, &c. are made perpetual. 9 *Ann.*

By 10 *Ann.* an Impost is laid on Sope for Thirty-two Years, and also on Paper, Pastboard, Books, Prints, Maps, and Linens printed or dyed in Foreign Parts, imported; and also on Silks, Callicoos, &c. made in *Great Britain*, except those dyed throughout of one Colour. Sope-makers are to give Notice in Writing of their Boiling-Houses, Coppers, Kettles, &c. under the Penalty of 50 *l.* And shall not remove any Sope from the Place where it was made, without giving Notice to the Officer of the said Duties, under the Penalty of 20 *l.*

Out of the Money arising from the Duties given by this Act, 168,003 *l.* was enacted to be an yearly Fund for clearing the principal Sum of 2,341,740 *l.* with Interest, at 6 per Cent.

The 10 *Ann. c. 26.* grants for Thirty-two Years a Duty on Deer-Skins, and all *Russia*-Hides, &c. tann'd Hides, foreign Beast-Skins, &c. imported: And also Duties on Starch, additional Duties on Coffee, Tea, and Drugs, &c. imported, for Thirty-two Years. Starch-makers are to give Account of their Names, Places of Abode, Work-houses, Fats, &c. under the Penalty of 50 *l.*

Importing any Coffee or Tea, (which is to be secur'd in a Warehouse) and not making due Entry thereof, and bringing it into the Warehouse, is a clandestine Running, and an unlawful Importation; and the Offender, and his Abettors, shall forfeit all the Coffee and Tea, and 500 *l.*

All Moneys arising by this Act, not exceeding 1800,000 *l.* after Loans of former Acts satisfied, were declared to be applied for and towards the defraying the Charge of the Navy, &c.

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By 12 *Ann.* Duties are granted for Thirty-two Years on Sails, and Sail-cloth, Canvas, &c. imported; and likewise on all chequer'd and strip'd Linens, &c. imported, and on Coals exported, &c.

By 1 *Geor.* are granted the Duties of Tonnage and Poundage, the Hereditary Duties of Excise, &c. to his Majesty for Life, towards raising the 700,000 *l. per Annum* allowed for the Service of his Majesty's Household; and for the better Support of the Dignity of the Crown.

These are the several Acts of Parliament relating to our Customs made from the Beginning; and as they set forth not only the Time of these Duties being introduc'd, but also how and in what Manner the Funds of this Kind have been charged and anticipated, as well as the Penalties of Frauds, I doubt not but the Mention I have made of them, and also the like Liberty in the succeeding Chapter of Excise, will be acceptable to my Readers.

And I have further to observe, That Customs, Imposts, and other Duties upon Merchandize imported or exported, are due to Princes and States by the Law of Nations; they are the absolute Commanders and Proprietors of the Ports and Havens, wherein all Commodities are either imported or exported, and have thereby a Right to Customs by their Prerogatives: And tho' the King cannot lay any Imposition on Merchandize without Consent of Parliament, yet he may prohibit Merchants from trading without his Royal Licence.

I am now proceeding to the Commissioners of the Customs, and other Officers employ'd in collecting these great Revenues of the Crown.

And

And first, the 14 R. 2. enacts, That no Controller of the Customs, or other Officer, shall be permitted to have any Concern in Shipping, or to meddle with the Freight of Ships. And by the 4 H. 4. Custom-house Officers are to be sworn to render true Accounts to the King.

The 3 H. 6. enacts, That if any Collector, or Controller, shall conceal Customs entred and paid, he shall forfeit treble the Value of the Merchandize, and be liable to a Fine.

By 20 H. 6. No Controller, Custom-house Officers, or their Clerks, Deputies, &c. shall have any Ship of their own, use Merchandize, keep Wharfs, or be Factors, Attornies, &c. under the Penalty of 40 l. to be divided between the King and Prosecutor.

The 4 H. 8. enacted, That no Collector or Controller of the Subsidy of Cloth of Gold, Silver, Velvet, Damask, Silk, &c. shall take any Thing for Sealing the same, on Pain of forfeiting 20 l. and Delaying the Merchant in Sealing, incurr'd a Forfeiture of 40 s.

By 1 Eliz. Controllers of the Customs and Searchers have Power to make Deputies in Ports, &c. and both they and their Deputies shall execute their Offices faithfully, under the Penalty of 100 l.

The 13 & 14 Car. 2. enacts, That if any Persons employ'd in any Thing relating to the Customs and Subsidies, take any Bribe, or connive at any false Entry, they shall forfeit 100 l. and be rendered incapable of any Employment under the King. And Officers of the Customs making false Certificates of Goods that should have been landed, shall lose their Employments, forfeit 50 l. suffer one Year's Imprisonment, and be incapacitated



to hold any Place of Trust concerning the Customs.

Officers of the Customs may enter any Vessel, and bring on shore all Goods prohibited and uncustomed, except Jewels, if outward bound; and if inward bound, may bring into the King's Storehouse all Goods found in any secret Place in or out of the Hold; and all Goods for which the Tonnage and Poundage were not paid, or compounded for, within twenty Days after the first Entry of the Ship, there to remain until the King's Duty is satisfied.

And no Ship or Goods shall be seised as forfeited for unlawful Importation or Exportation, or Non-payment of any Customs, &c. but by the Officers of the Customs, or by Warrant from the Lord Treasurer, &c.

Collectors, Controllers, Searchers, &c. are to reside at the Places of Discharging or Shipping of Goods. And none shall be employed in the Customs until they have taken an Oath for the faithful Execution of their Employments, &c.

If any Person employ'd in the Customs, exact greater Sums from the Merchant, than the Law requires, or shall put any Merchant, or other, out of his Turn, without Order from superior Officers, illegally detain the Goods of any, neglect to make Allowances, or after Notice do not execute his Warrant, he shall be liable to double Costs and Damages.

The Stat. 1 Jac. 2. which grants a Custom on Tobacco and Sugar, &c. enacts, That the Collectors of this Duty shall once every three Months, or oftner, ballance and adjust the Merchants Import-Accounts, the Merchants being oblig'd to deliver an Account at such Times of all the Goods liable to this Custom, remaining in their Hands:

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And the Collectors may appoint Officers to search the Warehouses, &c. of the Importer, and examine whether his Remainder agree with his Account; and such Officers Report shall be reputed the true Remainder. Importers not permitting such Officer to take an Account, &c. shall forfeit 100 l.

The King may authorize Commissioners, Collectors, or other Officers, to levy the said Duties in every Port, who shall attend at the usual Hours and Times, in which the Officers of the Customs in general ought to attend.

The 1<sup>st</sup> Fac. 2. which laid a Duty on French-Linnen, Indian-Linnen, Callicoos, &c. imported, requires, That the Officers concern'd in Collecting the Duties, shall keep a separate Account thereof, and pay them in Specie Weekly into the Exchequer; or upon Neglect, shall be liable to Penalties like unto Officers of the Exchequer. This Clause was inserted on Account of the Loan on this Act.

By 5 & 6 W. & M. the Act of Tonnage, &c. the Commissioners, and other Officers of the Customs, are to separate and keep apart all the Monies arising by these Duties; and the Controller of the Customs, or his Deputy, to keep a distinct Account in Books, fairly written, of the same: And the Commissioners are to pay these Moneys Weekly into the Receipt of the Exchequer, apart from other Monies they shall receive: And if the Commissioners shall neglect to pay the same into the Exchequer, or shall divert or misapply any Part of it; or if such Controller shall neglect his Duty in keeping the Accounts, then he or they shall forfeit their respective Places, and be incapable of any Office for the Future, &c. This Act was made for

raising 1500,000 l. for establishing the Bank of England, &c.

By 6 W. & M. Commissioners of the Customs, and Patent-Officers, their Deputies, Clerks, and Servants, who shall have any Employment in the Customs, shall, before their Admissions, be sworn well and truly to execute, to the best of their Knowledge and Power, their several Trusts and Employments, and that they will not take any Reward or Gratuity, other than their respective Salaries, and what is or shall be allow'd them by the Crown, or the regular Fees establish'd by Law for any Service done in the Execution of their Offices.

The two first nam'd Commissioners are to be sworn before the Chancellor, or Chief Baron of the Exchequer, &c. the other Commissioners, and Officers of the Customs in the Port of London, to take the said Oath before them, or any two Commissioners of the Customs sworn. And all other Officers of the Customs in the Out-Ports, or elsewhere, shall take the said Oath before two Justices of the Peace: And if any of the said Commissioners, or Officers, neglect or refuse to take the Oath aforementioned, every such Person shall forfeit his Office or Employment.

But the Stat. 6 & 7 W. 3. which grants additional Customs on Coffee, Tea, Chocolate, Currans, &c. imported; and requires that no Fees or Gratuity shall be taken by Officers of the Exchequer for any Payment, Entry, &c. on Pain of Forfeiture of Place, and treble Value; allows that Officers of the Customs duly employ'd in the Execution of their Offices on any extraordinary Service at Times not requir'd by Law, may receive such Recompence from the Merchant, &c. as the Commissioners of the Customs shall determine.

By

## The Gentleman's Law.

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By 7 & 8 W. 3. any Officer of the Customs, &c. may seize Bullion, shipp'd without Certificate from the Lord Mayor, &c. that Oath has been made that the said Bullion is Foreign Bullion; and the Bullion so shipp'd shall be forfeited, one Moiety to the King, and the other to the Seizor. And over and above the said Bullion, the Owner and Proprietor thereof shall forfeit double Value, one Moiety likewise to the King, and the other to such Person as shall sue for the same.

Every Commissioner or Officer of the Customs who shall grant any Cocket for exporting of Bullion, otherwise than according to the Directions of this Act, shall forfeit 200 £. and be made incapable of any Office of Trust whatsoever.

The 10 & 11 W. 3. enacts, That Officers of the Customs at every Unlading, Port, &c. may go on Board any Ship or Vessel laden with Salt, before the Delivery thereof, and demand a Sight of the Permit, weighing the Salt upon unlading the same: And if it be more than what is mention'd in the Permit, the Surplusage shall be forfeited, one Moiety to the King, the other to the Prosecutor.

Where any Vessel shall be hovering on the Coasts, not proceeding on her Voyage, the Officers of the Customs, &c. may go on Board and compel the Master to bring the Ship into Port, and continue on Board until the Salt be-unladen, or the Vessel depart on her Voyage: And if the Persons on board neglect to enter, or to unlade their Salt in twenty Days, or to proceed on their Voyage (unless permitted to stay longer by the Chief Officers of the Customs of that Port) all the Salt shall be forfeited, and double the Value.



On the Subsidy of Tonnage for all Wines imported, &c. by 2 *Ann.* the Custom-house Officers are not to take any Fee for any Thing relating only to the said Tonnage granted by this Act, under the Penalty of 40 *l.* one Third to her Majesty, and two Thirds to the Party griev'd.

By 9 *Ann.* Custom-house Officers conniving or assisting in any Fraud relating to Certificate Goods, forfeit their Offices, and are to be imprison'd six Months : Collectors, Controllers, and Surveyors of the Customs, or any two of them, are to grant Certificates under Hand and Seal, at the Place of Landing of Tobacco exported from *Great Britain* to *Ireland*, before Debentures are paid or allow'd.

The Commissioners of the Customs at the Request of the Importers or Buyers of Pepper, shall cause all Stones, Dirt, and other Trash, remaining in the Warehouses upon garbling and cleaning thereof, to be taken away and destroy'd as they think fit ; and they have the same Power with respect to Stones, Dirt, &c. mix'd with Coffee ; and thereupon the Warehouse-keepers shall be discharge'd in their Books of so much as the Pepper or Coffee is lessen'd in Quantity by such Management.

The Lord Treasurer, Commissioners of the Treasury, and the Commissioners of the Customs in *England*, for the Time being, have Power to constitute Officers of the Customs in any Town, Port, Harbour, &c. in the Plantations, &c. And such Officers shall give Security to the Commissioners of the Customs for faithful Execution of their Offices. All the Officers of the Customs in the Plantations, shall have the same Power and Authority for Visiting, Searching, Seising, &c. of Ships and Goods, as here in *England* ; and all Ships, Masters, and

and Commanders, &c. are liable to the like Penalties and Forfeitures as they are subject to in this Kingdom. Stat. 7 & 8 W. 3.

The Salaries of the most considerable Officers of the Customs are as follow.

The Commissioners of the Customs, each 1000 *l.* per Annum, the Chief Secretary 400 *l.* and the Solicitor 300 *l.* per Annum. These last have likewise large Salaries for Clerks.

The Receiver General 1000 *l.* per Annum, Controller General 1000 *l.* Inspector General 700 *l.* Register General, and Surveyor General, each 500 *l.* per Annum.

The Controller 575 *l.* per Annum, Collector inwards 466 *l.* Collector outwards 276 *l.* 13 *s.* 4 *d.* Warehouse Surveyor 350 *l.* Surveyor of the Out-Ports 366 *l.* Chief Searcher 120 *l.* per Ann.

Surveyor General of the Riding Officers in Kent and Suffex 540 *l.* per Ann. Inspector of the Out-Ports 400 *l.* Register of the Seizures 200 *l.* Viewer and Examiner of Tobacco 250 *l.* Surveyor of the Wine-Tasters 200 *l.* Land-Surveyors, each 200 *l.* Surveyor of the Act of Navigation 100 *l.* Jerkers each 100 *l.* per Annum.

Controller of the Cloth and Petty Customs, 300 *l.* per Annum, Secretary for the Western Ports 250 *l.* Assistants to the Receiver General and Solicitor, each 100 *l.* two Clerks to get Bills accepted 130 *l.* a Chief Teller 50 *l.* Assistant to the Controller General 150 *l.* Examiners 150 *l.* each. Land-Waiters 80 *l.* per Ann. each, the King's Waiters 52 *l.* Tide-Surveyors 60 *l.* Assistant to the Warehouse Surveyor 80 *l.* Additional Assistant 50 *l.* and Inspectors of the River, each 80 *l.* per Ann.

Controller upon the Issues and Payments 400 *l.* per Ann. Surveyor of the Searchers, 200 *l.* Searchers each 60 *l.* Surveyor of the Coast-Waiters 60 *l.* Coast-Waiters

Waiters each 40 l. Usher of the Custom-House 60 l. Warehouse-keeper 60 l. House-keeper 80 l. Land-Carriage Surveyor 80 l. Land-carriage Men 35 l. Customer of the Great Customs on Wool, &c. 50 l. Register of Ships 50 l. Tidesmen, each 35 l. Porters, each 35 l. per Ann. And Keymen per Week 15 s.

Besides Commissioners of Customs, there are also Commissioners of Trade and Plantations, who have 1000 l. per Ann. each, their Secretary 500 l. and several Clerks from 100 l. to 40 l. a Year.

Thus much will suffice for Salaries of Officers; I shall conclude with what *Ph. Gomineus*, a Foreigner, has written concerning English Subsidies: Says this Author, (*Lih. 5. fol. 233.*) *Reges Anglia nihil tale, nisi convocatis primis ordinibus, & assensiente populo, suscipiunt. Quæ consuetudo valde mihi laudanda videtur; interveniente enim populi voluntate & assensu crescit robur & potentia Regum, & major est ipsorum authoritas, & feliciores progressus.*

## C H A P. VII.

*Of the Laws of EXCISE, and Commissioners,  
and other Officers, for managing that Part  
of the Revenue; WINE-LICENCE, &c.*

**A**greeable to my Method in the preceding Chapter, I shall begin this Head with the Laws and Statutes from Time to Time made with Relation to the *Excise*.

The 12 Car. 2. granted to the King for Life, an Excise on Beer, Ale, Metheglin, Cyder, Vinegar, Strong-Water, &c. And for the securing of the Duties, Brewers and Retailers of Beer, Ale, and other the Liquors abovemention'd, are once a Month to make true Entries at the Office of Excise, of all the said Liquors which they brew or retail, under the Penalty of 5 *l.* Brewers, &c. refusing to permit Gaugers to enter and gauge the Vessels, shall be forbidden by them to sell the said Liquors, and if they sell after such Warning, they shall forfeit 5 *l.* and pay double Value. But Persons brewing and retailing small Quantities of Beer and Ale for Fairs, and who are not usual Brewers or Retailers, shall be discharg'd from all Penalties, paying the Excise. And all Penalties may be mitigated, so as not reduc'd to less than double the Duty, and Costs and Charges.

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Common Brewers, not selling by Retail, shall be allow'd for Waste and Leakage, of Beer three Barrels in Twenty-three. And of Ale two Barrels in Twenty-two, with Allowances in Case of false Entries.

By 15 Car. 2. Brewers, &c. are not to fit up or enlarge any Tun, Copper, &c. under the Penalty of 50*l*. They shall not bribe any Gauger, or other Officer of the Excise, on Pain of forfeiting 10*l*. No Brewer who shall compound for his Excise, shall brew, or suffer to be brewed within his Brew-house, for any other Brewer, any Beer or Ale, without giving Notice to the Officers of Excise, and paying the Duty, on Pain of forfeiting 5*l*. per Barrel. And Utensils for Brewing are chargeable for all the Duties of Excise owing for Beer or Ale brew'd in the said Brewhouse, and all Penalties and Forfeitures, into whose Hands soever they come.

No Brewer shall deliver, or carry out Beer or Ale before Notice given to an Officer of Excise, but between Three a Clock in the Morning, and Nine in the Evening, from *Ladyday* to *Michaelmas*, and between Five in the Morning, and Seven in the Evening the Winter half Year, on Pain of forfeiting 20*s*. a Barrel.

Justices of Peace, and chief Magistrates in Corporations, shall meet once a Month to determine all Offences against this Act: And all Penalties are to be divided, one Third to the King, another Third to the Poor, and the other to the Informer. And no Appeal in any Cause relating to the Excise, shall be admitted until the Appellant has deposited the Duty, and given Security to the Commissioners of Appeal, &c. for the Penalty, as was adjudg'd against him: But if the Judgment be reversed,

versed, he shall have double Costs; and if affirm'd, he shall pay the like Costs.

Colleges and Halls in either University, which before the Excise was impos'd, did brew their own Beer and Ale, are exempted from all Duties of Excise.

The Statute 1 *W. & M.* grants additional Duty of Excise on Beer, Ale, &c. and Brandy, &c. imported, to their Majesties for three Years. The Duties impos'd by this Act are to be rais'd in like Manner, and under such Penalties as are mention'd in 15 *Car. 2.*

In case any Distiller or Maker of Strong-Waters, or Spirits, shall, upon Request or Demand made by the Gauger, in the Day-time, or the Night-time, in the Presence of a Constable, refuse to permit the Gauger to enter his House, &c. he shall incur the Penalties inflicted by the said former Act, and the Prosecutor shall not be oblig'd to prove that such an Offender deliver'd out Part of his Commodities before the Duty clear'd.

No Brewer or Retailer of Beer, or Ale, shall use in the Working of Beer or Ale, any Molasses, coarse Sugar, Honey, or Composition or Extract of Sugar, on Pain to forfeit all such Liquors, and the Sum of 100 *l.* one Moiety to their Majesties, and the other to the Informer, so as the Suit be commenc'd within six Months after the Forfeiture incurr'd.

By the 2 *W. & M.* the several Rates, Duties and Impositions upon Beer, Ale, Cyder, and other Liquors, granted to King *Charles* the Second, (and now granted to their Majesties during their Lives, and the Life of the longer Liver of them) were declar'd a Fund of Credit for raising a Sum not exceeding 250,000 *l.* at 8 *per Cent*; and three Parts in four of the Monies arising by this Act, were order'd

der'd to be paid Weekly into the Exchequer for that Purpose, and separate Accounts to be kept, &c.

Monies due by Vertue of this Act, after an Order enter'd in the Register, may by Indorsement be transferr'd, and the Assignee may in like Manner assign it *Toties Quoties*: But such Indorsement must be notified in the Office of the Auditor of the Receipt, and an Entry or Memorandum made thereof in the Book for Register of Orders.

There is a Clause in this Act, enabling their Majesties by Letters Patents under the Great-Seal, to grant her Royal Highness the Princess *Anne* of *Denmark* the Yearly Sum of 20,000 *l.* payable Quarterly; and in Case of the Princess's Death, to grant the same to Prince *George* of *Denmark*, and the Issue of the said Princess.

By 2 *W. & M. Sess.* 2. Additional Duties of Excise on Beer, Ale, Cyder, Vinegar, Metheglin, Brandy, &c. are granted their Majesties for four Years, to enable them to borrow a Sum not exceeding 1,000,000 *l.* at 7 *per Cent.* for the Uses of the War, 570,000 *l.* whereof to be employ'd in building and furnishing Twenty-seven Ships of War, Seventeen of which to be third Rates, to contain 1100 Tuns, and carry Eighty Guns apiece; and Ten to be fourth Rates, of the Burthen of 900 Tuns, and carry Sixty Guns each.

The Officers of the Receipt of the Exchequer, were to keep the Monies paid in by Vertue of this Act, and the Account thereof apart, and a particular Account of the Building and Furnishing the said Ships, &c.

The 4 *W. & M.* grants the additional Duties granted by 1 *W. & M.* for three Years, for Ninety-nine Years. The Monies arising by the said Duties to be paid Weekly into the Exchequer as a Fund

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Fund for paying to the Contributors of the 1,000,000*l.* of the several Annuities following, viz. for every 100*l.* paid in, if such Contributor shall advance his Money upon one Life only, then he shall receive the Yearly Sum of 14*l.* if upon two Lives then 12*l.* and if upon three Lives then the Yearly Sum of 10*l.* upon Survivorship for Ninety-nine Years if the three Lives live so long.

By 7 & 8 *W.* 3. a Duty is laid on low Wines, Spirits, &c. all Distillers and others who make any Low Wines, Spirits, or Brandy from Corn, shall cause their Corn to be brewed, and from such Drink (without any Mixture of Molosses, Wash, &c.) draw their Low Wines or Spirits of the first Extraction.

Distillers, &c. setting up or altering any Tun, Cask, &c. for Brewing any Low Wines, Spirits, or Strong Waters for Sale, or using any private or conceal'd Warehouse, &c. they shall forfeit 20*l.* Distillers or Makers of Low Wines, &c. are not to set their Stills at Work, or deliver out any such Low Wines, &c. without Notice given to the Officer of the Excise, unless between the Hours of Five in the Morning and Eight in the Evening, from the 29th of *September* to the 25th of *March*; and Three in the Morning and Nine in the Evening the Summer half Year, under the Penalty of 10*l.*

All and every the Stills, Worms, and Still-heads, &c. in whose Hands soever they be, are liable and subject to the Debts and Duties of Excise owing by Distillers; and the said Debts, and all Penalties, may be levied on the said Stills, &c. as if the Debtor or Offender had been the true and real Owner of the same.



Brewers, &c. refusing to permit any Gauger in the Day-time, or with a Constable in the Night, to enter their Brewhouses, &c. and stay there and take an Account of the Worts as they are brewed off, shall forfeit 20*l*. And if any Brewer shall, after the carrying out of his Drink, mix any small Beer with strong, upon his Dray, or elsewhere, he shall be liable to a Penalty of 5*l*. encreasing strong Beer or Ale not in the Presence of a Gauger, such Increase shall be adjudg'd to proceed from mixing small Beer with strong, and the Brewer shall forfeit 40*s*. per Barrel.

Money was borrow'd on the Credit of this Act for raising 500,000*l*. towards defraying the Expence of his Majesty's Household, &c. at 6 per Cent.

By 8 & 9 W. 3. c. 19. No common Brewer shall have or keep any Pipe or Stop-cock under Ground, or other private Conveyance, by which any Beer, Ale, or Worts, may be conveyed from one Tun, brewing Vessel, or Place to another, on Pain of forfeiting 100*l*. And any Gauger, &c. may in the Presence of a Constable, &c. break up the Ground in any Brewhouse, or the Ground adjoining, or any Wall, to search for such private Pipe or Conveyance, making Satisfaction for the same, if no Discovery be made; and the Person opposing such Gauger in such Search shall forfeit 50*l*.

And in this Statute there is a Clause, That if any Brewer shall, without first giving Notice to the next Office of Excise, set up or alter any Tun, Cooler, Copper, &c. or have or keep any private or conceal'd Tun, &c. other than such as are openly known to be commonly used in his Brew-house, he shall forfeit for every such Vessel 200*l*.

## The Gentleman's Law.

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The 8 & 9 W. 3. c. 22. imposes a Duty of Excise on Malt, Mum, Sweets, &c. Malsters are every Month to make an Entry at the Excise-Office, of all Malt made by them under the Penalty of 10 *l.* and within three Months after to pay the Duty, or be liable to the Payment of double the Value.

No Maker of Malt shall alter his Vessel for steeping of Barley, without first giving Notice to the next Officer of Excise, nor keep any private Vessel for that Purpose, under the Penalty of 50 *l.* And Malsters refusing an Officer Entrance in the Day-time to gauge the Vessels used for steeping of Barley, &c. to forfeit 5 *l.*

Out of every twenty Bushels of Malt charged by the Gauger, there shall be an Allowance of four Bushels in Consideration of the Difference between Corn wet and swollen, and the same converted into dry Malt.

The Money arising by the Duties on Malt was appropriated to the Payment of 1,400,000 *l.* borrowed on this Act, in Malt Tickets at 10 *l.* each, thrown into a Lottery; and the Contributors not having Prizes, to receive 10 *l.* for every such Contribution, with a Farthing a Day Interest till paid off.

By 10 & 11 W. 3. Distillers are not to make, draw, or distil any Brandy, *Aqua vite*, Spirits or Low Wines, but according to the Limitations in this Act, from any Malt, Corn or Grain, or from any Wash, &c. under the Penalty of Forfeiting all such Brandy, &c. and 10 *s.* per Gallon. Every Distiller having any private Cock for Conveyance, by which any Wash or Liquors fit for Distillation, may be conveyed from one Back or Vessel to another, shall forfeit 100 *l.* a Moiety to the King, and the other to the Informer.

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None

None are to export out of this Kingdom any Beer, Ale, or Wash, or any Ale or Beer from which Spirits may be extracted, under the Penalty of 5 *l.* per Barrel, Ship-Beer excepted.

The 12 *W. 3.* orders that 3700 *l.* per Week, out of the Hereditary Excise granted 12 *Car. 2. &c.* shall be paid into the Exchequer; and the same appropriated to the Payment of 820,000 *l.* and Interest to be borrowed on this Act. Any Persons may advance the said 820,000 *l.* and Tallies of Loan shall be levied for the Money, and Orders drawn for the Repayment, with Interest after the Rate of 6 per Cent, and the Orders to be assignable &c.

By 1 *Ann.* the Excise on Ale, Beer, &c. granted to King *Charles* the Second, and King *William* and Queen *Mary* for their Lives, is by this Statute granted to Queen *Anne* during her Life: And it is declared, that the same with several other Branches of the Revenue shall be chargeable with 700,000 *l.* per *Annum*, for the Support of the Queen's Household.

The Duty of Excise, Revenue of the Post-Office, Wine-Licence, Seizures of prohibited Goods, &c. are not grantable by her Majesty, her Heirs or Successors, for any Estate of longer Duration than the Life of the King or Queen as shall make such Grant.

By 3 *Annæ*, the Duties of Excise are continued upon Low Wines, &c. And by 6 *Annæ*, &c. the Duty is continued on Malt, Mum, Cyder, &c. And by this Act the Malt made in *Scotland* is exempted from the Duty, but the Malt made there brought into *England*, is charged with the 6 *d.* per Bushel.

The 7 *Annæ*, likewise charges and continues Duties upon Malt, &c. Malsters are not to mix  
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Corn or Grain making into Malt of one Wetting, with Corn making into Malt of another Wetting, before the same is put on the Kiln for drying, on Pain of forfeiting 5 s. for every Bushel so mixed, one Moiety to the Queen, the other to the Informer. And if any Malster shall press, tread, or ram in the Cistern, Uting Fat, or Couch, any Corn steeping or steeped to make Malt, he shall forfeit 2 s. 6 d. per Bushel.

Malt brought from *Scotland* by Sea, to be entered at the Landing and the Duty paid : And if any Malt shall be damaged by the casting away, or sinking of a Ship, the Justices of Peace in Sessions upon Proof thereof, and of the Payment or Security given for the Duty, may certify an Allowance to be made, and the Proprietor on producing the Certificate to the Collector of the Duty, shall be repaid the Sum certified, or allowed it out of subsequent Duty becoming due.

The 8 *Anna*, grants additional Duties on Beer, Ale, &c. for 32 Years. Metheglin, Vinegar, &c. are likewise charged ; and where Vinegar is used in making of Pickels for Sale, those who make it are adjudged Vinegar-Makers for Sale : But Vinegar made by the Manufacturers of white Lead only, and used by them in preparing the same, shall not be chargeable.

The 9 *Anna*, continues the Duties on Malt, &c. Justices of Peace have Power to mitigate the Penalties, so as the Sum be not reduced to less than double Duty, and the Costs and Charges in Prosecution, as in the Case of Brewers. There is a Clause of Loan in this Act at 6 per Cent. for any Sum not exceeding 650,000 l. And by 10 & 12 *Anna*, 700,000 l. was borrowed on the Malt-Tax at 5 per Cent.



By 1 *Geo.* the Duties on Malt, &c. are continued : And the Time of paying the Duty is enlarged to four Months after the Entry made. There is likewise a Clause in this Act for borrowing any Sum not exceeding 700,000 *l.*

In respect to the Business of the Commissioners and other Officers of the Excise, the first Act I shall take Notice of is likewise 12 *Car. 2.* By this Statute the Commissioners and Sub-Commissioners are empowered under their Hands and Seals to constitute Gaugers to gauge Coppers and Vessels, and take an Account of Liquors belonging to Brewers, Distillers, &c.

The Commissioners of Excise by this Act may compound for the Duty of Excise with Retailers: And the Lord Treasurer may farm the Duties not exceeding three Years. Offences committed in *London* to be determined by the Commissioners, or Commissioners for Appeal; and Offences committed elsewhere, by two or more Justices of the Peace: And the Commissioners and Justices upon Appearance, or Contempt of the Party accused on Summons, may examine the Matter, and upon Proof by Confession, or Oath of one Witness, may give Sentence, and issue Warrants for levying the Forfeitures by Distress and Sale, &c.

By 15 *Car. 2.* No Commissioners of the Excise are to farm it, nor shall Farmers of the same act as Commissioners. Two able Artists are to be appointed, one by the Commissioners or Farmers, and another by the Brewers of any Town or Place, who shall be sworn before a Justice of Peace to compute truly the Contents and Gauge of all Brewing Vessels, and to give one Copy thereof to the Commissioners, and another to every Brewer.

Gaugers of Excise shall weekly after the Brewer hath or ought to have made his Entry, deliver at the

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the House of such Brewers, a Copy of their Return made to the Commissioners, under the Penalty of 40 s. No Officer shall take any Fee for any Bond, Receipt, or Note, on Pain of forfeiting 10 s. And Gaugers taking any Bribe, are subject to a Forfeiture of 10 l.

No Person shall be employed in the collecting or taking Accompts of the Duty of Excise, till he have taken the Oaths appointed by 12 Car. 2. before the Persons thereby appointed, and have entered his Certificate of taking them with the Auditor of Excise, under the Penalty of 50 l.

By 15 & 16 Car. 2. Where Commissioners of the Excise have issued any Summons for a Person to appear, the leaving it at the House, or with the Wife, Child or Servant of the Person chargeable, shall be adjudged a good Service of the Summons. Farmers of Excise are invested with the like Powers and Authorities as Commissioners, except in such Cases as relate to the judicial Part of their Office.

The 1 W. & M. enacts, That no Commissioner or other Person employed in the Excise, shall demand or receive any Money or other Reward from any Person but their Majesties, on Pain of forfeiting their Offices.

Gaugers are to make their Returns and Charges upon warm Worts, making an Allowance of a tenth Part for Waste; and on any Over-charge returned by the Gaugers, the Commissioners of Excise, or Justices of Peace upon Complaint made to them on Behalf of the Brewers, &c. shall hear and determine the same.

By 2 W. & M. Gaugers are to take an Account of all Wash and other Materials prepared for making Low Wines, and of all Low Wines, Spirits, and strong Waters found in the Houses, &c. or in any Wash-back, Cask, or other Vessel used by any

Maker of Low Wines or Spirits; and if there be any Decrease of the Liquor brewed, which they found gauged the last Time they were there, not exceeding 24 Hours before, and they shall not have a satisfactory Account of the Disposal of the same, they are to charge the Distiller with so much Low Wines as such Liquor missing would have made.

If any Gauger or other Officer of the Excise shall wittingly make a false Charge, by returning any Quantity of Low Wines not made of malted Corn, as made from such Corn, he shall lose his Employment, and forfeit for every Gallon falsely charg'd, 10 s.

Commissioners of the Excise, &c. refusing or neglecting to pay the Money arising by this A& into the Exchequer, as a Fund for the Money borrowed, or misapplying any Part thereof, to forfeit their Places, and be disabled to execute any Office or Place of Trust, &c.

By 4 W. & M. which grants additional Duties on Beer, Ale, &c. as a Security for Payment of Annuities for Life, &c. on a Million of Money borrowed by the Government: The Commissioners for the Management of the Excise at the Head-Office in London, are to keep apart the Money arising by the Duties granted by this A&, as the same shall be paid in; and there shall be kept in the Office of the Auditor of the Receipts, one Book, in which all the said weekly Money shall be entred apart from other Money.

By 5 & 6 W. & M. true Notes in writing of the last Gauges made or taken by the Gaugers, are to be left by them with Brewers, Makers or Retailers of Beer, Ale, or other exciseable Liquors, or some of their Servants, at the Times of taking their said Guages, containing the Quantity and Quality

Quality of the Liquors so gauged, under the Penalty of 5*l*.

No Collector, Supervisor, Gauger, or other Officer, or Person whatsoever concerned in the Excise, or any Branch thereof, shall by Word, Message, or Writing, or in any other Manner whatsoever, endeavour to perswade any Elector to give, or dissuade any from giving, his Vote for the Choice of any Person to be a Knight of the Shire, Citizen, or Burgeſs in Parliament, on Pain to forfeit 100*l*. and Disability to execute any Office, &c.

The 7 and 8 *W. 3.* enacts, That Gaugers are within three Days after the end of every Week to leave with Brewers or their Servants, a Copy under their Hands, of every Charge made in such Week; and on Refusal, or Charging the Brewer more than such Copy contains, the Gauger to forfeit 10*l*.

All inferior Officers, who have been, or shall be duly authorized and constituted by the Commissioners of Excise, &c. shall remain and continue in their respective Offices, notwithstanding the Death or Removal of any of the said Commissioners, by whom they were so authorized, or any Alteration or Determination of the Commission of such Commissioners, until the Authority of such inferior Officers be revoked.

Commissioners of Excise and Justices of Peace upon Information for any Offence against the Laws of Excise, may summon any Person or Persons, besides the Party accused, to appear before them to give Evidence, and for Neglect or Refusal so to do, every such Person making Default, shall forfeit the Sum of 10*l*.

By 8 & 9 *W. 3.* which imposes a Duty of Excise on Malt, &c. Officers of Excise, on Request are to be permitted to enter into the House, Malt-house,



or other Place of any Person whatsoever, in the Day-time to gauge the Vessels used for steeping of Barley or other Grain for making of Malt, and to take an Account of the Quantity of Barley steeping or steeped therein, and report the same to the Commissioners, leaving the Copy of such Report with the Masters for a Charge.

The Commissioners of the Excise, or such Persons as they shall appoint, or the Collector or Supervisor of the District, have Power to compound with any Person for the Duties on Malt not made for Sale, but for the Use of Families, at the Rate of 5 s. *per Annum* for every Head in the Family, taking Security for Payment of the same Quarterly; and in such Cases the Malt-houses of such Persons shall not be liable to the Survey of the Officers of Excise; but if after Composition made, such Persons sell or deliver out any Malt to others, or sell any Beer, Ale, &c. then they shall lose the Benefit of such Composition, and be liable to the Penalties of Malsters using private Vessels for steeping, &c. without giving Notice to the proper Officers.

The 10 & 11 W. 3. requires, That Sub-Commissioners, or Collectors of Excise do procure a substantial Ale Quart and Pint made of Brass, according to the Standard in the Exchequer, and certified from thence, to be delivered to the Mayor or chief Officer in every City, Market-Town, &c. within their respective Divisions, under the Penalty of 5 l. The said Sub-commissioners or Collectors are to deduct their Expences in providing and delivering such Brass Ale-Quarts and Pints to each Mayor, &c. by inserting the same in their next Accomps, where it will be allowed. Mayors, &c. are to cause all the Ale-Quarts and Pints to be measured and

and sized with such Standard, and also marked,  
&c.

By 11 & 12 W. 3. No Member of Parliament shall be a Commissioner or Farmer of the Excise, or a Commissioner of Appeals, or Controller or Auditor of the said Duty, or a Collector or Manager thereof, under the Penalty of being rendered incapable to sit in the House of Commons.

The 12 W. 3. directs, That the Commissioners of the Excise are to keep apart the Money arising by the Branches of Excise granted by this Act: If the Commissioners neglect to pay, or misapply the Money, they shall forfeit their Offices and double the Money misapplied. The Controller of the Excise shall keep Books of the Money arising by the said Excise, to which free Access may be had, under the Penalty of 100 *l.* and Forfeiture of Office.

The Acts continuing the Duties of Excise in the Reign of Queen *Anne*, contain very few Particulars relating to the Officers of the Excise, more than what is to be found in former Statutes, till the 9th Year of her Reign, on laying a Duty upon Hops.

By this Statute Officers are to be sworn before Commissioners of Excise, or before Justices of the Peace, for the due Execution of their Offices. When they are entred on their Offices they shall attend the Bagging and Weighing of Hops, and cause the true Weight of every Bag, or Pocket to be visibly mark'd, and then enter it in their Books, and make a Return thereof in Writing to the Commissioners of Excise, leaving a true Copy with the Planter, if demanded; and such Return of the Officer shall be a Charge on the Planter: The Officer refusing or neglecting to leave such Copy, is liable to a Penalty of 5 *l.*

Officers

Officers of the Excise may at any Time by Day or Night, but if in the Night-time with a Constable, enter into the Oust or Store-house for the Curing or keeping of Hops; a Planter or Owner hindering them forfeits 20 *l.* Planters concealing Hops from the Officers, forfeit 20 *l.* And using any Oust, Store-house or other Place or Kiln for curing or keeping Hops, without giving Notice to the Officers of Excise in Writing, they are liable to a Forfeiture of 50 *l.*

I shall now examine into, and take some Notice of, the Laws relating to the *Wine-Licence*; By 7 E. 6. All Persons are prohibited selling Wine by Retail in any City, Borough, or Town, but by Licence of the major Part of the Common Council, Aldermen, Burgeses, or Commonalty there under their Common Seal; and not above two to be licenced in one Place, except in Cities and large Towns: Selling Wine without Licence to forfeit 5 *l.*

The 12 Car. 2. enacts, That the King may issue out under the Great Seal Commissions to two or more, to licence whom they think fit, to sell Wine by Retail according to the Direction of this Act. Such Persons so appointed shall be called his Majesty's Agents for granting Licences for the selling and uttering Wine by Retail; and may under their Seal of Office to be appointed by the King, grant Licences for any Term not exceeding twenty-one Years, if the Person to whom granted so long live.

The King may appoint other Officers for the Management of the Wine-Licence, so as their Salaries with those of the Commissioners exceed not 60 *l.* in the Pound of the Revenue arising by this Act: Which Revenue shall be duly paid into the Exchequer, and not charged with any Pension,

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*&c.* The Privileges of the Universities; and of the Company of *Vintners* in *London*, *&c.* were saved by this Act.

By 15 *Car.* 2. The Power and Authority of granting Wine-Licences, was given to *James*, Duke of *York*, and the Heirs males of his Body, with all the Profits thereof: And such Persons as he or his Heirs males should appoint, were authorized to grant such Licence for any Time not exceeding twenty-one Years, if the Grantees lived so long, under such Rents and Conditions as they thought fit, but to take no Fines.

But the 12 *&* 13 *Car.* 2. grants the Revenue of Wine-Licences, with all the Profits thereof, and the Powers of granting Licences for Retailing of Wines, to the King, his Heirs and Successors: And as an Equivalent to the Duke of *York* for the same, the King was enabled by Letters Patent to grant to the said Duke and the Heirs males of his Body, the yearly Sum of 24,000 *l.* out of the Excise on Beer, Ale, *&c.*

These are all the Laws I find of any Signification, concerning Wine-Licences: So that I shall proceed to Salaries of Officers employed in the Excise-Office, Salt-Office, and the Wine-Licence Revenue.

Commissioners of the Excise have 800 *l.* per *Annum* each, two Cashiers for themselves and Clerks 1500 *l.* Controller 700 *l.* his Deputy 180 *l.* Secretary to the Commissioners for himself and Clerks 450 *l.* Solicitor 350 *l.*

Auditor for himself and Clerks 900 *l.* (himself 500 *l.*) Commissioners of Appeals 200 *l.* Accomptants general 200 *l.* Accomptants for *London* Brewery 100 *l.* Chief Examiners of the Excise and Malt Officers, 100 *l.* per *Annum*.

Register 350 *l.* House-keeper 200 *l.* General Surveyor and General Gauger of all Vessels in *London*,  
*&c.*



*don. &c.* 175 *l.* General Surveyors of the *London* Brewery 125 *l.* Register to the Commissioners of Appeals 100 *l.* Deputy Auditor 100 *l.* Correspondent 100 *l.* Collector of Duties on imported Liquors 80 *l.* Accomptants for the Country Excise, and Candle-Duty 80 *l.* each, Clerk of the Stationary Wares 70 *l.* Examiners 60 *l.* *per Annum.*

Officers in the Country; Collectors 200 *l.* Supervisors 80 *l.* Gaugers 50 *l.* and Supernumeraries 30 *l.* *per Annum.*

The Officers of the *Salt-Duty* are not much unlike those of the Excise: Commissioners have 500 *l.* a Year; Controller for himself and Clerks 350 *l.* Secretary 200 *l.* Cashier 200 *l.* Solicitor 100 *l.* Chief Accomptant 100 *l.* other Accomptants 70 *l.* Correspondent 90 *l.* Assistant Clerk 60 *l.* Receiver's Clerk 50 *l.* Correspondent's Clerk 50 *l.* Collector of Salt imported 60 *l.* Assistant Searcher 60 *l.* Surveyors at the Port of *London* 50 *l.* Collectors in the Country 120 *l.* others 80 *l.* Supervisors 80 *l.* Riding Surveyors 60 *l.* Riding Officers 50 *l.* Supernumeraries 20 *l.* *per Annum.*

No Salt shall be delivered from any Salt-Works, without Notice given to the Officer, on Pain of Forfeiture, and also 10 *s.* *per* Bushel, one Half to the Prosecutor, the other to the King: Not entering Salt is liable to the same Penalty. Stat. 9 & 10 *W.* 3. And by this Statute Commissioners of Excise are to appoint the necessary Officers for the additional Duty on Salt, &c.

The *Wine Licence* Officers are very few in Number: The Commissioners have 300 *l.* *per Annum*, Controller 200 *l.* Secretary and Cashier each 80 *l.* Clerk of the Contracts 50 *l.* *per Annum*, &c.

## C H A P. VIII.

*Of the POST-OFFICE, and its Revenue;  
and the Salaries and Business of Officers,  
&c.*

THE Customs and Duties of Excise (both of them Hereditary) the Wine-Licence, and Post-Office Revenues, are all made chargeable for raising of the Money for Support of the King's Household; and as I have now treated of the three former, I think it consistent with Method to proceed in the next Place to an Enquiry into the latter.

As for the Use of the Post Office little is necessary to be observ'd; it is highly obvious that the Post is of the greatest Consequence in Point of Advice and Intelligence; without which, Trade and Commerce, the Support of our Wealth and Grandeur, could not in any Degree be render'd so flourishing, nor Business dispatched with that Expedition, which many Times is requisite not only for the Service of particular Persons, but the Nation in general.

The first Law that introduced this very great Convenience, was made in the Reign of King Charles the Second. By 12 Car. 2. it was enacted, That a General Post-Office should be erected in London, the Master whereof to be appointed by his Majesty by Letters Patents: And that no Persons but he and his Agents, and the Persons employed by them, shall have the Receiving, Sending and Delivery of all Letters and Packets, those sent by Coaches, Carriers,

Carriers, Masters of Ships relating to Merchandize, and Letters sent by special Messengers excepted; and also except Proceedings out of any Court, Affidavits, &c. carried by the Hands of Messengers on purpose.

The Rates by this Statute appointed for Postage of Letters are as follow, viz. For a Letter not exceeding one Sheet of Paper, to or from any Place not farther distant than eighty Miles, 2 *d.* Not exceeding two Sheets the same Distance, 4 *d.* And for Packets proportionably. For a Letter of one Sheet above eighty Miles, 3 *d.* not exceeding two Sheets, 6 *d.* Packets 1 *s.* per Ounce. For Letters from London to Berwick the same, and no more. For a Letter not exceeding one Sheet, from England to Dublin, or back, 6 *d.* not exceeding two Sheets, 1 *s.* Packets 2 *s.* per Ounce, &c.

For Letters and Packets conveyed to and from Parts beyond the Seas, the Rates following; To St. Maloes single, 6 *d.* double 1 *s.* Ounce 1 *s.* 6 *d.* to Dunkirk, Ostend, Lisle, Ghent, Brussels, Antwerp, Amsterdam, and all Parts of Flanders, Hamburg, Colen, Frankfort, &c. 8 *d.* single Letters, 1 *s.* 4 *d.* double, and 2 *s.* Packets. To Paris, Bourdeaux, Rochel, Nantes, Venice, Geneva, Leghorn, Rome, Naples, &c. single, 9 *d.* double, 1 *s.* 6 *d.* treble, 2 *s.* 3 *d.* To Marcellia, Smyrna, Constantinople, Aleppo, &c. by way of Venice, (Post paid to Mantua) and to Noremberg, Bremen, Dantzick, Lubeck, Leipsic, and other Places of like Distance, Post paid to Hamburg, 1 *s.* single Letters, 2 *s.* double, 3 *s.* three fourths of an Ounce, and 4 *s.* per Ounce.

Merchants Accompts not exceeding one Sheet, Bills of Exchange, Invoyses, and Bills of Lading, and Covers not exceeding a Quarter of a Sheet, of Letters sent to Marseilles, Venice, or Leghorn, to be

sent forward to *Turkey*, shall pass without any Rate.

Letters and Packets brought in any Vessel to any Port-Town, (other than such as are before excepted) shall be forthwith delivered at the Post-Office of the Port-Town to be sent forward. And inland Letters shall pay at the Stage where they are last delivered, unless the Party that delivers the same desires to pay elsewhere.

If the Mail be carried out of *England* in any Vessel not *English* built, and navigated with *English* Seamen, the Postmaster-General shall forfeit 100 *l*.

A Post shall come twice a Week by the Way of *Truro* and *Penryn*, to *Marketiew* in *Cornwall*; and once a Week to *Kendal* by way of *Lancaster*, and to *Penrith* in *Cumberland*, by way of *Newcastle* and *Carlisle*, and to *Lincoln* and *Grimsby* in *Lincolnshire*.

The Postmaster-General is to continue constant Posts to all Places throughout the Post-Roads, under the Penalty of 5 *l*. and may take 3 *d*. per Mile for a Horse, and 4 *d*. for the Guide every Stage.

No Persons shall carry Letters, other than as are before excepted, or provide Post-Horses, or Persons to ride, on Pain of forfeiting 5 *l*. for every Offence, and 100 *l*. per Week for Continuance of it.

But if any Post-master do not furnish Persons riding Post with Horses in half an Hour's Time after demanded, such Persons may provide for themselves, and the Post-master shall forfeit 5 *l*. for his Negligence.

The Office of Post-master the King may grant for Life, or Years, not exceeding twenty-one, but no Person shall be capable of any Employment relating to the Post-Office, but such as shall have taken



taken the Oaths of Allegiance and Supremacy, before two Justices of Peace of the County where they are resident.

By 15 *Car.* 2. All the Profits accruing to the King by reason of the Post-Office, were settled upon *James Duke of York*, and the Heirs males of his Body; none of which was to be paid into the Exchequer, but to the said Duke or his Receiver-General. And the said Duke and his Heirs males were empowered to sue for the same in the King's Name, or their own, by Bill, Complaint, Information, Action of Debt or otherwise, in any Court of Law or Equity.

But the King reserved to himself the Nomination of the Post-master-General, with Power to grant the said Office for Life, or twenty-one Years, *ut supra, &c.*

The Duke of *York* was no sooner come to the Possession of the Crown, than that an Act passed, declaring the King should from thenceforth be seized of the Revenues and Profits arising by the Post-Office, of one entire and indefeasible Estate in Fee-simple; the Act last above-mentioned notwithstanding. 1 *Jac.* 2. c. 12. But I take it this Statute was repealed in the beginning of the Reign of King *William*, in like manner as was the Act granting the Duties of Excise, &c. to that Prince for Life.

In the 1 *W. & M.* an Act was made for erecting a Post in *Scotland*; which is all I find concerning the Post Office, till the 9th Year of Queen *Anna*; when the Post-Offices (after the Union) of both Kingdoms were united. By the 9 *Annæ* it is enacted, That there shall be one general Post-Office in *London*, and one Post-master-General to be made by Letters Patent, and he or his Deputy and Deputies, and none other shall have the receiving and dispatch-

dispatching Letters in all Places within this Realm, and without; where he shall settle any Posts, (except Letters which concern Goods sent by common Carriers, and which shall be delivered with such Goods without any Profit for Receiving or Delivery of them, and except Merchants Letters, and those of Masters of Ships, delivered to the Persons directed without any Reward; and also Letters sent by private Friends on a Journey, or any Messenger; Commissions, Affidavits, Writs, &c.) But Carriers, Stage-Coachmen, Masters of Passage-Boats, Watermen, &c. are to receive no Letters which do not concern Goods then in Conveyance, although without Hire or Reward.

The Post-master General may keep one Letter Office in *Edinburg*, another in *Dublin*, another at *New-York*, and other chief Offices at convenient Places in the Plantations in *America*; and appoint Deputies, &c. The Post-master General and his Deputies, and no other Persons shall provide Horses and Furniture for any Person riding Post, where any Post-Roads shall be settled; and shall take for Letters and Packets the following Rates, viz.

For every Letter to and from any Place in *England*, not distant above eighty Miles from *London*, 3 *d.* and for every double Letter 6 *d.* and so proportionably for every Packet of Letters: And for a Packet of Writs, Deeds, &c. 1 *s.* per Ounce. For every single Letter above eighty Miles from *London*, 4 *d.* and for a double Letter 8 *d.* and for other Things 1 *s.* 4 *d.* per Ounce. For every single Letter from *London* to *Edinburg*, and from thence to *London*, &c. 6 *d.* and for every double Letter 1 *s.* other Parcels 2 *s.* per Ounce. For every single Letter from *Edinburg* to any Place not exceeding fifty Miles in *Scotland*, 2 *d.* and for a double Letter

Letter 4 *d.* other Packets 8 *d.* per Ounce. And if above fifty Miles 3 *d.* for a single Letter, &c. and if above eighty, 4 *d.* &c. For every single Letter from *London* to *Dublin*, or from thence to *London*, 6 *d.* for a double Letter 1 *s.* other Parcels 2 *s.* per Ounce. For a single Letter from *Dublin* to any Place in *Ireland*, not exceeding forty *English* Miles, 2 *d.* if above forty Miles, 4 *d.* &c. Postage of Letters and Packets directed on Shipboard, or brought from any Vessel riding in any Port in *England*, 1 *d.* over and above the said Rates; and for the Postage of all Letters and Packets sent by the Penny-Post, and to be delivered within ten Miles from the General Post-Office, 1 *d.*

All Letters and Packets coming from any part of *France* to *London*, or going thither; single Letters 10 *d.* double 1 *s.* 8 *d.* treble 2 *s.* 6 *d.* Ounce 3 *s.* 4 *d.*

From *London* through *France* to *Spain*, *Portugal*, (Post paid to *Bayonne*) and from *Spain* and *Portugal*, back to *London*; single 1 *s.* 6 *d.* double 3 *s.* treble 4 *s.* 6 *d.* Ounce 6 *s.*

From *London* through *France* to *Italy* or *Sicily*, by the way of *Lyons*, or to any part of *Turkey* by the way of *Marcelia*, and from any of those Parts through *France* to *London*, single 1 *s.* 3 *d.* double 2 *s.* 6 *d.* treble 3 *s.* 9 *d.* Ounce 5 *s.*

From the *Spanish Netherlands* to *London*, single 10 *d.* double 1 *s.* 8 *d.* &c.

From *London* through the *Netherlands* to *Italy*, *Sicily* (Post paid to *Antwerp*) and from *Italy* or *Sicily*, that way to *London*; single 1 *s.* double 2 *s.* treble 3 *s.* &c.

From *London* through the *Netherlands* to *Germany*, *Switzerland*, *Denmark* or *Sweden*, and all Parts of the *North*, and from any of those Parts through

through the *Netherlands* to *London*; single 1 s. double 2 s. &c.

From *London* through the *Spanish Netherlands* to *Spain*, *Portugal*, and so back; single Letters 1 s. 6 d. double 3 s. &c.

From the *United Provinces* to *London*; single 10 d. double 1 s. 8 d. &c.

From *London* through the *United Provinces* to *Italy*, *Sicily*, and so back; single 1 s. double 2 s. &c.

From *London* through the *United Provinces* to *Germany*, *Switzerland*, *Denmark*, *Sweden*, and all Parts of the *North*, and so back; single 1 s. double 2 s. &c.

From *London* through the *United Provinces* to *Spain* and *Portugal*, single 1 s. 6 d. double 3 s. &c.

From *London* through the *Spanish Netherlands*, or the *United Provinces* to *Hamburg* (Post paid to *Amwerp*, or *Amsterdam*) and so back, single 10 d. double 1 s. 8 d. &c.

All Letters passing between *London*, *Spain* or *Portugal*, in *Packet-Boats*, single 1 s. 6 d. double 3 s. &c.

From *London* to *Jamaica*, *Barbados*, *Antego*, *Montserat*, *Newis*, *St. Christopher's*, and from any of those Places to *London*, single 1 s. 6 d. &c.

Letters and Packets from *London* to *New-York*, in *North America*, single 1 s. double 2 s. &c.

From *New-York* to *New-London*, the chief Town in *Connecticut* in *New-England*, &c. and from thence back again, single 9 d. double 1 s. 6 d. &c.

From *New-York* to *Newport*, the chief Town in *Rhode-Island*, *Boston* in *New-England*, &c. single 1 s. &c.

From *New-York* to *Virginia*, single 1 s. 3 d. &c. and to *Charles-Town* in *Carolina*, &c. single 1 s. 6 d. double 3 s. treble 4 s. 6 d. Ounce 6 s.



Letters to and from Places in the Plantations not exceeding sixty Miles Distance 4 *d.* single, &c. and not exceeding 100 *English Miles*, single 6 *d.* double 1 *s.* &c.

Foreign Letters delivered at any Place between *London*, and any of the Ports from whence the Packet-Boats sail, must pay the same Rates as if conveyed to and from *London*. And all Letters and Packets brought by any Master of a Ship, or any of his Company, or Passengers, shall be immediately delivered into the Post-Office, under the Penalty of 5 *l.* unless such as are sent by a Friend, &c.

The Post-master-General may keep Packet-Boats, &c. erect cross Stages, and demand and receive the same Rates in any of such cross Stages, in Proportion to the Distances of Places, as Letters conveyed to and from *London* are rated. He may also appoint a Person to measure the Roads by the Wheel, where Stages are not already settled; such Person taking an Oath before some Justice of Peace, to make the Survey according to the best of his Skill.

The same Penalties are inflicted for Persons carrying Letters not deputed by the Post-master-General, as by 12 *Car. 2. viz.* 5 *l.* for every Offence, and 100 *l.* per Week. Foot-Posts, Horse-Posts, or Packet-Boats, not to be set up without Licence from the Post-master-General, under the like Penalties. No Person shall collect Letters in *London*, or the Suburbs, without the Licence of the Post-master-General, under the Penalty of forfeiting as Persons carrying Letters and delivering them contrary to the Act. And any Person employed as a Deputy Post-master, or otherwise, who shall not duly account for all By-Letters, and who doth not put in his Post-Bills all the By-Letters he shall receive, distinguishing the same whether single or double,

double, &c. or that shall destroy any such By-Letter, shall forfeit for every Offence the same as Persons prohibited setting up a Post-House.

The Post-master-General, and his Deputies, may continue By-Bags for Collecting and Delivering By-Letters, the said Deputies paying the Duties to the Receiver-General. All Money due for Letters not exceeding 5 *l.* shall be recovered before Justices of Peace, as small Tithes are; and shall be paid before any Debt due to a private Person. The manner of Recovery of small Tithes, is thus: Upon Complaint made, two Justices of Peace are to summon the Person, examine the Matter, and determine upon Oath; and in Writing under Hand and Seal, to order the Money to be paid, or on Default of Payment to levy it by Distress ten Days after Notice, &c. The Justices have likewise Power, besides adjudging a reasonable Allowance for the Tithes, to allow Costs not exceeding 10 *s.*

Post-masters not furnishing Post-Horses; and if the Mail be carried out of *England* in a Vessel which is not a free Ship, &c. incur the same Penalties as by 12 *Car.* 2. No Person shall open, detain, or delay any Letter after the same is delivered in at the General Post-Office, except by a Warrant in Writing under the Hand of a Secretary of State, or unless the Party to whom 'tis directed refuses to pay the Postage, &c. the Person offending in these Particulars, or imbezilling a Letter, to forfeit 20 *l.* if committed in *England*, to be recovered in the Courts at *Westminster*; if in *Scotland*, to be recovered in the Court of Sessions, or in the Exchequer, by such Person who will sue for the same, with full Costs, and the Offender shall be likewise incapable of any Employment in the Post-Office.

The Post-master-General in *London*, shall cause an Account to be kept by an Accomptant-General, of all Money arising by this Act, as the same shall be brought into the Office, and paid to the Receiver-General, who must make a weekly Payment of 700 *l.* into the Exchequer: The Post-master-General not appointing an Accomptant-General; the Accomptant-General neglecting to keep a true Account, and the Receiver-General neglecting to make the weekly Payment into the Exchequer; or if either of them, or other Officer, shall misapply the Money, they shall forfeit their Offices, be incapable of any Place of Trust, and pay double the Value of the Money misapplied; to be recovered in any of the Courts at *Westminster*. The 700 *l.* per Week is to be paid into the Exchequer for thirty-two Years, as a Fund for Annuities, &c. and after that Time is expired, the old Rates to be taken for Letters again.

By this Act the Officers of the Post-Office are required to take the Oaths of Allegiance, Supremacy, and Abjuration; receive the Sacrament according to the Usage of the Church of *England*; and also take an Oath not to open, or delay Letters, &c. except by express Warrant of a Secretary of State, &c. and no Person employed in the Post-Office, shall intermeddle in Elections of Members of Parliament, so as to perswade any Elector to give his Vote for any particular Person, under the like Penalty as Officers of Excise, by 5 & 6 *W. & M.*

The Post-master-General shall observe such Orders and Rules for Settlement of Posts and Stages on the Roads, and providing Horses, &c. as the Crown shall make and ordain.

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The Post-Office in *London* is managed by a Deputy, and other Officers to the Number of seventy-seven. And the Post-master-General has under him one hundred eighty-two Deputy Post-masters in *England* and *Scotland*, most of them keeping regular Offices in their Stages, and Sub-Post-masters in their Branches.

For the Convenience of those who live far from the General Post-Office in *London*, there are particular Post-Houses appointed at proper Distances all over the Town, to take in Letters till nine a Clock at Night *Gratis*, and after that taking 1 *d.* to be sent from thence in due Time to the General Post-Office.

For the Transportation of Letters and Packets to Foreign Parts, his Majesty keeps in Time of Peace several Pacquet-Boats between *England* and *France*, *Spain*, *Flanders*, *Holland* and *Ireland*, two or three between each Place: And the Pacquet-Boats for *France* go from *Dover* in *Kent* for *Calais*, on *Thursdays* and *Fridays* in the Evening, if the Wind serves. For *Spain* one goes every Fortnight from *Falmouth* in *Cornwall* to the *Groyn*. For *Flanders*, from *Dover* to *Newport*, every Week on *Tuesdays* and *Saturdays*, in the Evening. For *Holland* from *Harwich* to *Helvoetsluis*, on *Wednesdays* and *Saturdays*; and for *Ireland*, from *Holyhead* to *Dublin* on *Mondays* and *Thursdays*.

The Conveyance of Post-Letters extends to every considerable Market-Town, and is so expeditious that every twenty-four Hours the Post goes six-score Miles. And the Post-Days to send Letters from *London* to any Part of *England* and *Scotland*, are, *Tuesdays*, *Thursdays* and *Saturdays*; and the Returns certain on *Mondays*, *Wednesdays*, and *Fridays*. But to *Wales* and *Ireland* the Post goes only



twice a Week, *viz.* *Tuesdays* and *Saturdays*; and returns from *Wales* every *Monday* and *Friday*; and from *Ireland* the Return is uncertain.

The Post goes every Day to the Place where the Court resides; and also to the usual Stations of the Royal Fleet, as the *Downs*, *Spithead*, &c. and to *Tunbridge*, during the Season for drinking the Waters.

*Mondays* and *Thursdays* are the Post-Days for *France*, *Spain*, and *Italy*: *Tuesdays* and *Fridays* for *Holland*, *Germany*, *Denmark* and *Sweden*: And on *Mondays* and *Fridays* the Post also goes for *Flanders*, and from thence to *Germany*, *Denmark* and *Sweden*.

Letters that come from all Parts of the World, by the General Post, directed to Persons in any Country. Towns to which the Penny-post goes, are delivered by the Messengers thereof, the same Day they come to *London*; and the Answers are safely carried every Night to the Office in *Lombard-street*, being left at the Receiving Houses.

By this Penny-post, any Letter or Parcel not exceeding sixteen Ounces Weight, or ten Pounds Value, is conveyed daily with the utmost Speed and Safety to and from all Parts within the Bills of Mortality, and within ten Miles round. And several General Offices are kept at a convenient Distance from one another to receive Penny-post Letters, every Day, *Sundays* excepted.

The two Post-masters-General of the General Post-Office, have 1500 *l.* per Annum each Salary. Receiver-General 300 *l.* Accomptant 200 *l.* Controller of the Inland Office 200 *l.* Controller of the Foreign Office 150 *l.* Deputy Controller 100 *l.* Secretary to the Commissioners 100 *l.* Chief Clerk 100 *l.* other Clerks 60 *l.* Solicitor 100 *l.* Inspectors of the Post-Office 100 *l.* each: Alphabet-Keeper 100 *l.* Assistants 50 *l.* Sorters 40 *l.* Letter Carriers 11 *s.* per Week.  
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There is also an Officer called the Court-Post, constituted for Life by Patent, who has a Salary of 365 *l. per Annum*.—The Officers of the Penny-post, are a Controller, Accomptant, Collector, Clerks, Sorters, Messengers, &c. The Controller has 200 *l. per Annum*, the Accomptant and Collector each 70 *l.* the Controller's Clerk 30 *l.* Sorters 26 *l.* and Messengers 20 *l.* each *per Annum*.

The late Queen was enabled by Act of Parliament, to grant Prince George of Denmark an Annuity of 100,000 *l. per Annum*, 50,000 *l.* whereof to be issuing out of the Revenues of the Post-Office, and 50,000 *l.* out of the Excise: And also to settle upon the Duke of Marlborough and his Posterity, for the more honourable Support of their Dignities, a Pension of 5000 *l. per Annum* out of the Post-Office Revenue.

## C H A P. IX.

*Of the Statutes concerning the STAMP-OFFICE,  
Commissioners for the Stamp-Duties and  
other Officers.*

**A**S the Stamp-Duties imposed on Vellom and Parchment relate to Grants and Commissions of the Crown to Ministers and Officers, as well as Persons and Things in general, it may not be improper to take some Notice of the several Statutes which have been made on this Head, and which empower the Commissioners to act in their Offices.

The 5 & 6 W. & M. granted the several Duties upon Vellom, Paper and Parchment following (to wit) For every Skin of Parchment, &c. on which any Grant, or Letters Patent under the Great Seal, or of any Honour, Dignity, Franchise, &c. shall be ingrossed or written, 40 s.

Grants of Offices above 50 l. a Year, of any Sum of Money exceeding 100 l. Grants of Lands, Leases, &c. under the Great Seal, or Exchequer Seal, &c. Presentations or Donations under the Great Seal, Collation by any Bishop, or Presentation by any Patron; Dispensations to hold two Ecclesiastical Benefices or Dignities; Certificates of Degrees taken in the Universities or Inns of Court; Admittance of Fellows of the College of Physicians, or of any Attorney, Clerk, Proctor, &c. of any Court; Appeals from the Court of Admiralty, Prerogative Court, &c. and Pardons of Crimes,  
and

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and Reprieves, &c. are all subject to the like Stamp-Duty of 40 s.

Skins of Parchment, Paper, &c. whereon shall be written Institutions, or Licences under the Seal of any Bishop, or Ecclesiastical Court; Sentences in the Court of Admiralty, and Attachments from thence; Conveyances, &c. inrolled in any Court at *Westminster*, &c. Writs of Covenant for levying Fines, and Writs of Entry for suffering Recoveries; Exemplifications passing the Seal of any Court; Decrees or Dismissions made in Chancery, the Exchequer, &c. *Habeas Corpus's*, *Certiorari's*, Writs of Appeal, and of Error, &c. Licences or Certificates of Marriage, and Letters of Mart; Recognizances and Statutes-Staple or Merchant; and Probates of Wills and Letters of Administration for any Estate above 20 l. Value, to have a Stamp of 5 s.

Personal Decrees in the Court of Admiralty; Warrants under the Sign-Manual (except for the Navy or Army) Commissions out of Ecclesiastical Courts; Judgments signed by any Member of the Prothonotary's Office, &c. and Records of *Nisi prius* or *Postea*, 2 s. 6 d. Stamp.

For Admissions into a Corporation or Company, or into any of the Inns of Court; Bills, Answers, Replications, Interrogatories, and other Proceedings in the Chancery, Exchequer, Dutchy and County-Palatine-Courts; and Special Bail-pieces, and Appearances, 1 s.

Indentures, Leases, and Deeds-poll, not otherwise charg'd; Bonds, Releases, Contracts, Letters of Attorney, &c. Affidavits (except for burying in Wollen, and before Officers of the Customs, and Justices of Peace, &c. relating to Taxes) Copies of Affidavits read or filed in any Court; Rules of Court, and Copies of Rules and Orders entred, or  
of



of any other Records or Proceedings in any of the Courts at *Westminster*; Common Bail to be filed in any Court, and Appearance thereupon; Citations, Monitions, Libels, Decrees, Inventories, &c. made and exhibited in any Ecclesiastical Court; Actions in the Mayor's or Sheriff's Courts of *London*, and in all other Courts or Corporations, out of which no Writs issue, holding Plea for Debts or Damages amounting to 40*l.* or above; and for original Writs, *Subpena's*, &c. a Stamp Duty of 6*d.*

For every Sheet, &c. on which any Declaration, Pleading, &c. in any Court of Law, and Copies thereof; Depositions in Chancery, and Copies of Bills and Answers, &c. and Copies of Wills, &c.

And Persons Ingrossing or Writing upon any Vellom, Parchment or Paper, any Thing for which the said Vellom, &c. is charged as aforesaid, before the same shall be marked or stamped according to the Directions of this Act; or ingrossing or writing upon any Parchment or Paper marked or stamped for any lower Duty, than what is directed, the Offender for every such Offence, shall forfeit 5*l.* and no Deed or Writing shall be good in Law till the 5*l.* is paid, and the same is stamped.

But Bills of Exchange, Accompts, Bills of Parcels, or any Bills or Notes for Payment of Money, not sealed; Probates of Wills, or Letters of Administration of a Seaman or Soldier slain in the King's Service; and Persons admitted to sue or defend *in Forma pauperis*, are not chargeable by this Act.

By 9 & 10*W.* 3. All and every the Stamp Duties granted by 5 & 6*W.* & *M.* are doubled, (except in Cases of Pardons, Certificates of Degrees in the Universities or Inns of Court, Conveyances inrolled, &c. Licences for Marriages, Writs for

for levying Fines, or suffering Recoveries, and Habeas Corpus Writs) And Parchment, Paper, &c. is to be stamped with two Marks, to denote both the Duties.

The additional Duties are made perpetual; and all Parchment and Paper before the Ingrossing or Writing, shall be brought to the Head Office to be stamped. This Act likewise does not extend to Bills of Exchange, Notes, &c. *ut supra*; nor to any Warrant or Recognizance before a Justice of Peace, or the Surrender of any Copyhold Estate, or Court-Martial-Proceedings, &c.

The 1 *Ann.* enacts, That if any Person entrusted to enter or file any Action, Plaint, &c. by which a Stamp-Duty is payable, shall neglect the same, he shall forfeit 20 *l.* And if any Person write any Thing upon Paper or Parchment (for which the said Duty is payable) whereon before is written any Thing in respect whereof the Stamp-Duty was to be paid, before such Parchment, &c. be again stamped; or shall raze or cause to be razed out the Name of any Person, or other Thing, or fraudulently cut or tear off any Stamp, with Intent to use it for any other Writing or Matter, charged with the said Duty, he shall forfeit for every Offence 20 *l.* and full Costs of Suit.

All Deeds and Instruments are to be written so that some Part thereof shall be upon, or as near as may be to the Stamps, under the Penalty of 10 *l.* one Moiety of the Forfeitures to be to her Majesty, and the other to the Persons suing for the same, in any Court of Record, by Action of Debt, &c.

There shall be allowed to every Person who shall at any one Time bring to be stamped, a Quantity of Parchment or Paper, the Duties whereof amount to 10 *l.* after the Rate of 6 *l.* per Cent per Annum for six Months, upon present Payment.

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By 10 *Ann.* a Stamp-Duty of 2 s. 3 d. is granted on Parchment and Paper, whereon shall be written any Surrender or Admittance of, or to any Copyhold Estate in *Great Britain*; or any Grant or Lease by Copy of Court-Roll, &c. of any Manor, except the Original Surrender to the Use of a Will, and the Court-Book, wherein the Proceedings of the Court are entered.

And upon every Skin, or Piece of Parchment or Paper, upon which shall be written any Original Instrument of Heretable Lands or Rights, &c. in *Scotland*, the like Stamp-Duty of 2 s. 3 d. For every Policy of Insurance 2 s. 4 d.

And by 12 *Ann.* is granted for Thirty-two Years a Stamp-Duty on Parchment or Paper, on which any Transfer of Stock in any Company is written, of 4 s. 6 d.

For any Grant, or Letters Patents under the Great Seal, Dutchy-Seal, &c. of any Honour, &c. for Pardons (except the General Circuit, and *Newgate* Pardons) for Appeals from the Admiralty, or Prerogative Court; for Grants from the Crown of any Sum above 100 l. passing the Great Seal or Privy Seal; Grants of any Offices exceeding 50 l. Value *per Ann.* Dispenfations of holding two Benefices, &c. Admittance of Attorneys, &c. in any Court, 40 s. over and above all other Duties.

For all Institutions or Licences which pass the Seal of any Archbishop or Bishop; Letters of Mart, 5 s. Beneficial Warrants, or Orders, under the Sign Manual (except for Military Service) 2 s. 6 d. And for every Indenture, Lease, Bond, or any Deed not otherwise charg'd, 6 d. except Indentures for binding poor Children Apprentices.

There is likewise a Stamp-Duty payable for Pamphlers and Books, *viz.* all Papers call'd Pamphlers, shall for every Half-sheet pay one Half-penny;

penny; larger than half a Sheer, and not exceeding a whole Sheet 1 *d.* Larger than a whole Sheer, and not six Sheets in Octavo, or in a lesser Page; or not exceeding twelve Sheets in Quarto; or twenty Sheets in Folio, 2 *s.* for every Sheet of Paper contain'd in one printed Copy. But Acts of Parliament, Proclamations, Vores of Parliament; Forms of Prayer, Books of Devotion or Piety, School-Books, Weekly-Bills of Mortality, &c. are not liable to this Duty. Advertisements in News-Papers are subject to a Duty of 1 *s.* each.

The Penalty for not stamping is 10 *l.* but subject to Mitigation, not under a fourth Part. And if any Persons shall counterfeit or forge any Stamp or Mark, or the Impression of the same, to defraud the Crown of the Stamp-Duties, they shall be guilty of Felony without Benefit of Clergy; and Persons selling Parchment or Paper, &c. with counterfeit Stamps knowingly, are likewise guilty of Felony.

As to Officers for the Management of the Stamp-Duties, the aforemention'd Statute 5 & 6 *W. & M.* empower'd their Majesties, under the Great Seal of *England* to appoint Commissioners and other Officers, who are to keep their Head Office in some convenient Place within the Cities of *London* or *Westminster*; and the Commissioners have Power to appoint inferior Officers for the Stamping of Parchment and Paper, and for levying and collecting the Duties.

The Commissioners are likewise to provide six several Marks or Stamps, differing from each other for all Parchment and Paper, *viz.* one Stamp for the Parchment and Paper charged with the 40 *s.* Duty; one for the 5 *s.* another for the 2 *s.* 6 *d.* another for the 1 *s.* another for the 6 *d.* and another



ther for the *1 d.* Duty, with which all Parchment and Paper shall be severally and differently mark'd and stamp'd; and the said Marks and Stamps shall be publish'd by Proclamation under the Great Seal, and may be alter'd as their Majesties shall think fit, likewise by Proclamation.

The Proclamation for giving Notice of the Alteration of Stamps shall be sent to the Mayor, Chief Magistrate, or other head Officer of every City, Corporation, Borough or Market-Town, which Officers are to cause the same to be publish'd to the Inhabitants the next Market-Day, under the Penalty of 200*l.*

If any Commissioner, or Officer, shall fix the Mark or Stamp before the respective Duties thereon charg'd, shall be paid or secur'd, he shall forfeit 100*l.*

The Commissioners must take special Care that the several Parts of the Kingdom, shall be furnish'd with Stamp'd Parchment and Paper, so as Persons may have their Election either to buy the same of the Officers or Persons to be employ'd by the Commissioners, or to bring their own Parchment or Paper to be stamp'd.

The Commissioners are to appoint fit Persons to attend in Courts and Offices, to take Notice of the Parchment or Paper upon which any Thing chargeable with the Duty is engross'd or written, and the Stamps and Marks thereupon; and if any Officer of such Courts, &c. shall ingross or write any Thing for which a Duty is payable, on Parchment or Paper unstamp'd, &c. he shall not only be liable to the Penalty of 5*l.* but shall forfeit his Office, Place, or Employment; and Attornies to be disabled, &c.

All Persons commissioned by this Act, and every Person employ'd under them for the marking or stamping of Parchment and Paper, shall before their Acting in their respective Offices, take an Oath to execute the Trusts repos'd in them with Fidelity, &c.

By the 9 & 10 W. 3. the Commissioners of the Stamp Duties, and their Officers, are to observe the Directions of the Lords Commissioners of the Treasury. And the King, or the Commissioners of the Treasury, may order Payment of the Salaries, and incident Charges in the Management, to be made out of the said Duties. The Commissioners of the Treasury shall also, once every Year, set the Prices, that all stampt Parchment or Paper shall be sold at, which shall be stamp'd upon the same accordingly.

The 1 Ann. requires, That the Controller and Accountant-General of the Stamp-Duties, shall annually pass a general Account in the Exchequer; and in Discharge of every such Account shall be comprehended all Monies paid by the Receivers-General, within the Time of the Account, Salaries, Charges of Management, Discounts for prompt Payment, Monies paid for Parchment and Paper bought by the Commissioners, and other Things, which by the Course of the Exchequer ought to be discharged in an Account of this Nature.

The Stock of Parchment, Paper, &c. shall be set down at the Foot of every Account; and every annual Account is to be deliver'd to the Auditor of the Imprest by the Accountant-General, and be sworn by him; the Accountant-General not finishing it, and delivering it in, shall forfeit the Sum of 100 l. and his Office,

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Arrears

Arrears of Duty at the End of such Account, shall be set *Insuper* on the Persons chargeable therewith, that the same may be recover'd by the Process of the Court of Exchequer; but if any Accountant-General wilfully and knowingly return any Person *Insuper* for Money or Stamps duly answer'd, whereby such Person sustains Damage, then such Accountant shall pay treble Damages with Costs of Suit, to be recover'd in any of the Courts at *Westminster*.

By a Statute pass'd in the Reign of King *William*, on making the Salt and Stamp-Duties a Fund for Annuities at 8 *l. per Cent* for Money borrow'd; the Commissioners of the Stamp-Office are to keep a-part and pay Weekly into the Exchequer the additional Duties on stamp'd Parchment and Paper, and a distinct Register thereof is to be kept. The Commissioners for managing the said Duties not paying the same duly into the Exchequer, or misapplying any Part thereof, shall forfeit their Places, and be incapable of any Place of Trust, and pay double Value, &c. And Collectors detaining any Part thereof, shall be dismiss'd, pay Interest at 12 *per Cent*, and treble Damages, and forfeit double the Sum. 9 & 10 *W. 3.*

By 10 *Ann.* the Commissioners of the Stamp-Duties, or such head Officers as they shall appoint, may cancel all the Stamps upon News-Papers or Pamphlets, as shall remain unfold in the Hands of any Printer or Publisher, upon Oath made before them, That the Copies so cancell'd are really unfold in the Hands of him for whom they were printed or published, and that none of them have been fraudulently return'd after the same have been dispos'd of; and shall cause the like Number of Sheets, Half-Sheets, or less Pieces

of

of Paper, to be stamp'd with the like Stamps *Gratis*, for the Person who paid the Duties for such Stamps; and the Commissioners may make such Rules and Orders for regulating the Methods, and limiting the Time of cancelling such News-Papers and Pamphlets as they shall find necessary.

Two or more Justices of Peace may hear and determine any Offence against this Act, by printing, selling, or exposing to Sale any Pamphlet or News Paper, within their Jurisdictions, not stamp'd; which said Justices upon Complaint made to them within three Months, are to summon the Offender, and the Witnesses, on either Side, and examine them on Oath, or proceed if the Offender doth not appear, upon Proof of Notice given, and give Judgment against him; and if he be convicted upon View of the said Justices, or upon such Information, the Justices may issue Warrants for levying the Penalty on the Goods of the Offender, and sell the same, if not redeem'd within six Days; and if he hath no Goods, then he is to be committed to Prison until he pay the Penalty. But if the Party be aggriev'd by the Sentence of the two Justices, he may appeal to the Quarter-Sessions.

The Salaries of the Commissioners, and other Officers belonging to the Stamp-Office, are as follow, *viz.* the Commissioners 400 *l.* per Annum, the Receiver-General 300 *l.* the Controller 300 *l.* the Secretary 200 *l.* Accomptant-General his Assistant 100 *l.* Solicitor 50 *l.* a Year.

Warehouse-keeper 130 *l.* per Annum, Inspectors of Courts 100 *l.* Secretary's chief Clerk 70 *l.* other Clerks 50 *l.* Clerk of the Securities 60 *l.* Teller of the Stamps 60 *l.* Supervisors of the Stampers 60 *l.* per Annum, and about forty Stampers at 40 *l.* a Year each.



There are riding Surveyors allow'd about 100*l.* *per Annum*, and above fifty Country Distributors of stamp'd Parchment and Paper, &c. who have an Allowance of 18*l.* in the Pound for all the Money return'd by them into the Office: And these Distributors have their Under-distributors, the Number whereof are uncertain, according to the Extent of the District.

The Stamp-Office is kept in *Lincoln's-Inn*.

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## C H A P. X.

*Of Forfeited ESTATES; Forfeitures of Lands in General for capital Crimes; and Commissioners for the Sale of Estates forfeited.*

I Have in my Introduction just mention'd the Forfeitures incurr'd by committing of Treason, and other Capital Crimes, extending to Lands, Tenements, Goods and Chattels; but I shall here give you the Laws and Statutes relating to such Forfeitures, before I proceed to forfeited Estates, and Commissioners appointed to examine into them, and make Sales, &c.

By *Magna Charta* the King shall not hold the Lands of Persons convict of Felony, longer than a Year and a Day, and afterwards they shall be deliver'd to the Lords of the Fee. And Sir *Edward Coke*, in *The Second Part of his Institutes*, says, "That the Lords of whom the Lands were holden, were contented to resign them to the King for a Year and a Day, *pro bono publico*."

The 17 *Ed. 2.* gives to the King the Goods of Felons and Fugitives, &c. and the Year, Day, and Waste of Lands: *Bona & Catalla proditorum, felonum, utlagat', in exigend' positorum, fugitivorum, Deodand' Annum, Diem & Vastum, &c.*

The Lord of the Fee who is entitled to the Forfeitures by this Act likewise, after the Year and Day, may compound with the King for the Year, Day, and Waste.

If a Traitor or Felon either rescue himself, or will not submit to be arrested, but resisteth, and in such Resistance is slain; upon Presentment thereof he shall forfeit all his Goods and Chattels. 3 Part, Co. Inst. 227. X

By 34 Ed. 3. there shall be no Forfeiture of Lands for Treason committed by Persons dead, who were not attainted in their Lives.

By 11 H. 7. no Person that attends upon the King, or doth him Service in his Wars, or other Post of Command, shall be attainted of High Treason, or other Offence for his so doing, whereby to incur a Forfeiture of any Lands or Goods, &c. but he shall be discharged for the same, unless he declines his Allegiance.

And by 24 H. 8. if any Person is indicted or appeal'd for the Death of another, attempting to murder or rob him, or to commit Burglary, he shall forfeit no Lands or Goods for the same, but shall be acquitted thereof, tho' it be found by Verdict.

By 26 H. 8. for Treason committed out of the Realm, an Offender being lawfully convicted by Presentment, Confession, Verdict, or Process of Outlawry, shall forfeit to the King all such Lands, Tenements, and Hereditaments, which he shall have of any Estate of Inheritance in Use or Possession, by any Right, Title, or Means, within the King's Dominions, at the Time of such Treason committed, or after. The Rights, Titles, Interests, Possessions, Leases, Rents, Offices, and other Profits of all other Persons, except the Offenders, saved.

The Statute *De Catallis Felonum*, enacts, That no Person apprehended for Felony, for which he shall suffer Imprisonment, shall be disseised of his Lands or Chattels until he be convicted thereof:

But

## The Gentleman's Law.

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But as soon as he is taken, his Tenements and Chattels shall be view'd by the Sheriff, and other Officers of the King, and lawful Men, and inventoried, and kept by the Bailiff, who shall give Surety to the Justices for the Chattels, or to answer the Price; saving to the Accused, and his Family, their Necessaries during his Imprisonment, and his reasonable Estovers, so that when he is convicted, the Residue of his Chattels may remain to the King, with the Year and Day of his Lands; but if he be acquitted, his Chattels shall be restored.

But the 1 R. 3. prohibits the Seizure of Goods of any Person arrested for Suspicion of Felony, before he be convicted or attainted, or the same Goods be otherwise legally forfeited, under the Penalty of rendering double Damages, recoverable by Action of Debt, &c.

And Sir *Edward Coke* tells us, That regularly the Goods, &c. of any Criminal cannot be taken and seized to the King's Use, before Forfeiture; that the same cannot be inventoried, and the Town charg'd therewith, before the Owner be indicted of Record; and that the begging of Goods or Lands of any Delinquent accused or indicted of Treason, Felony, or other Crime, before he is convicted and attainted, is utterly unlawful; for before Conviction and Attainder, nothing is forfeited to the King, nor grantable by him; and besides, it makes the Prosecution against the Offender more precipitate, violent, and undue, than otherways it would be. *Co. Inst. 3 part, 228, 229.*

Thus much of Forfeitures in General: I now advance to forfeited Estates occasion'd by Rebellions, &c. and the Commissions thereto relating.



Our Acts of Parliament of anient Date, make no Mention of Commissions for the Sale of forfeited Estates; and on the Restoration of King *Charles* the Second, after the Grand Rebellion, I do not find any particular Statute directing the Sale of Estates of Offenders guilty of Treason; tho' one Act made in that Reign, granted to the King Money in the Hands of Treasurers, &c. not pardon'd by the Act of Oblivion.

But in the Reign of King *William*, (*Anno 11 & 12*) for granting an Aid to his Majesty, by Sale of forfeited Estates in *Ireland*, &c. on a Rebellion in that Kingdom, it was enacted, That all Lands, Tenements, Rents, &c. in *Ireland*, of Persons attainted or convicted of Treason or Rebellion, or who died in actual Rebellion; and all Judgments, Securities, Debts, Goods and Chattels, which the Persons so convicted or attainted, were possess'd of, or interested in, should be vested in Sir *Cyril Wyche*, *Francis Annesley*, Esq; and several others, Trustees for Sale of the said Estates.

The Trustees to take the Oaths appointed *Anno 1 W. & M.* and also an Oath for the due Execution of their Trusts, and not to purchase any of the said Estates. The Trustees to appoint Registers, Clerks, Surveyors, &c. And they are likewise to take an Oath for the due Execution of their Offices, and not to purchase any Part of the Lands forfeited, themselves.

The Trustees, or any seven of them, to meet at such Place in *Ireland* as they shall think fit; and they may send for Persons, Writings, and Records, as they think necessary, and administer Oaths for Discovery of the Truth; and all Sheriffs, Bailiffs, Constables, &c. are to obey their Orders.

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They may proceed summarily, and act and determine by Examination on Oath, Inspection of Writings, or otherwise; and Persons neglecting or refusing to appear before them to be examin'd, may be committed to the County-Gaol until they conform. And Officers not obeying the Trustees Precepts, to be fin'd, not exceeding 40*l*.

Debtors making a Discovery of their Debts due to such convicted or attainted Persons, paying two Thirds thereof, as the Trustees shall direct, shall be discharg'd of the intire Debt; but neglecting to make such Discovery, shall forfeit double. And Persons possess'd of any Goods or Chattels of Persons so convicted, discovering the same to the Trustees, to be allow'd one fourth Part thereof; but neglecting to make such Discovery, shall forfeit double the Value, and the Trustees may make such Compositions touching the Debts, Goods, or Chattels so discover'd as they shall think fit.

Persons not so indebted or possess'd of such personal Estate, discovering any real or personal Estate conceal'd, shall have 5*s*. per Pound out of such personal Estates, and out of the real Estates a like Proportion, not exceeding a fourth Part of the Value.

All Persons having any Right or Title to any of the Lands, Tenements, &c. (those claiming under the King, and forfeiting Persons, excepted) to make their Claims by a certain Time prefix'd; the Claims of Infants to be made by their Guardians; of Feme Coverts by their Husbands; and of Idiots and Lunaticks by those who have them under their Care. The Claimants shall answer their Claims upon Oath, if requir'd, and produce their Writings, &c. If they make false Claims they shall forfeit double the Value of the Things claim'd; and if a Claim be not allow'd by the Trustees, the Claimants

Claimants shall be for ever barred. And Conveyances made by Persons convicted or attainted being private Trusts, except real Settlements on or before Marriage, are declar'd fraudulent, and no Claim to be allow'd thereupon.

The Sale of the forfeited Estates to be by Auction; and on Payment of the Purchase-Money the Trustees to execute an Indenture of Bargain and Sale, which being inroll'd in the Chancery in six Months, the Purchasers to be adjudg'd actually feis'd of the Premises: And the Sheriffs, if need be, are to put them in Possession.

All Persons possess'd of any Lands, &c. hereby vested in the Trustees, shall give the said Trustees a true Account thereof in Writing, or forfeit three Years Value; and answer the Profits until the Time of Sale. And such as have entered upon any of the said forfeited Estates, without any Grant thereof, shall answer the Value of the Profits during the Time of their Possession. And Occupiers committing Waste, to pay treble Damages.

Rectories impropriate, Advowsons, &c. forfeited, are to be convey'd by the Trustees for forfeited Estates, to such Trustees as the Bishop of the Diocess shall nominate, for imploying the Profits thereof for twenty Years in repairing and rebuilding ruinous Parish-Churches; and afterwards to be applied in perpetual Augmentation of small Livings.

An Allowance of 1000 *l. per Annum* is order'd out of the first Money arising by the Act for Commissioners of Enquiry, and 1500 *l. per Annum* to each of the Trustees for Sale of the forfeited Estates.

By 1 *Ann.* all Sales by the Trustees shall be to Protestants only; and every Papist is disabled to purchase in his own Name, or in Trust, any Hereditaments

ditaments vested in the Trustees, or any Interest in or out of the same. And all such Conveyances and Trusts for them shall be void.

Leases of the Premises shall be made to Protestants only; and if any Lease shall be made or assign'd to, or in Trust for a Papist, it shall be void; and as well the Persons making, as he for whose Use the same is made, shall forfeit treble the yearly Value, one Moiety to the Crown, and the other to the Person suing for the same being a Protestant.

All Powers given to the Trustees after the 24th of *June*, 1703, to cease, and the Trustees, then to deliver to the Commissioners of the Revenue by Indenture, all the Deeds, Writings, Records, and Papers touching the Premises to be inroll'd in the Exchequer.

And all Estates vested in the said Trustees, which shall not be sold pursuant to former Acts: And all Judgments, Securities, Debts, Specialties, Goods, and personal Estate, vested in the said Trustees not dispos'd of before that Time, shall be vested in her Majesty, her Heirs and Successors, for the Uses intended by the Acts aforesaid; subject to the Appointments of the Parliament of *England*.

Next to these Statutes, is 1 *Georg.* made upon Occasion of the late desperate and bloody War and Rebellion. This Statute enacts, That all Castles, Honours, Lordships, Manors, Lands, &c. of Persons attainted of High Treason, shall be forfeited to his Majesty; and also all Judgments, Debts, Securities, &c. which are vested and put into the actual and real Possession of his Majesty, without any Office or Inquisition, for the Use of the Publick.



Sir *Richard Steel*, and several other Commissioners, are appointed for Discovery of the Estates forfeited, who are to take the Oaths; and also to be sworn, for the faithful Execution of their Trusts, without Fee or Reward (beyond what is allow'd by Law) and not to conceal, or have any Share or Interest in Lands discover'd, &c.

They are to have General Meetings, the first in the Exchequer-Chamber at *Westminster*, and at such Meetings agree upon Rules for the Government of themselves, and their Officers, in Performance of their respective Trusts; and may distribute themselves, so as seven of the Commissioners be resident in *England*, and six in *Scotland*; who may appoint a Commissioner to travel into any Parts where forfeited Estates lie, for the better Discovery thereof: And in case of any Disputes, the King may by Warrant make Orders for the better carrying on the Services directed by this Act.

The Commissioners in *England* and *Scotland*, or any four or more of them, are to appoint a Register, Clerks, and other Officers, who are to be sworn in like Manner as the Commissioners; and if any of the Commissioners, Registers, Clerks, &c. presume to act before they have taken the Oaths appointed, they shall forfeit the Sum of 200 *l*.

The said Commissioners, or any four of them, are to meet, act, and proceed, from Time to Time, without Adjournment; may send for Persons, Papers, and Records, which they may detain so long as they have Occasion for the same; they shall administer Oaths for the better Discovery of the Truth of the Enquiries; and all Sheriffs, Bailiffs, Constables, and other Civil Officers, shall obey

obey their Orders. And they are impower'd to proceed in a summary Way, without the Formalities of Proceedings in Courts of Law or Equity.

The Commissioners may commit Persons summon'd for not appearing, and impose Fines on Officers for not obeying their Precepts. And the same Clauses follow for encouraging Debtors to make a Discovery of their Debts, Persons possess'd of personal Estates, and others, to discover the same, and a Salvo for Claimants, as by 11 & 12 W. 3. *Supra*.

The Commissioners are to secure Goods, and personal Estate in such Places as they shall think proper; and make true Inventories thereof, cause Appraisements to be made by two Appraisers upon Oath, and sell the same by Auction to such Persons who shall bid most Money, first giving three Days Notice of the Time and Place they intend to expose the said Goods, or any Part thereof, to Sale. The Money arising by such Sale to be paid into the Exchequer for the Use of the Publick; and if any of the Contractors make Default in Payment of the Money contracted for, he shall forfeit one Third.

Persons possess'd of forfeited Estates, are to give Notice to the Commissioners, or on Default shall forfeit two Years Value: And pay the Rents reserved, and payable, into the Receipt of the Exchequer, or otherwise account for the Profits. Persons entering upon forfeited Estates, are responsible for the Profits, or in Default shall forfeit double Value, unless they discover them by a Time prefix'd; and then they are discharg'd of accounting for the Profits. Persons who have committed Waste, are liable to treble Damages.

The Commissioners are to give up Accounts in Writing to the King, and both Houses of Parliament; and they are not incapable of sitting in Parliament. Forfeited Sheriffships and Stewarties in *Scotland* are annex'd to the Crown: And there is a Proviso in this Act, enabling his Majesty to make Provision for the Maintenance and Support of the Wives of the late Duke of *Ormond*, Earl of *Mar*, and Lord *Bolingbroke*; and for raising Portions for their Daughters, out of the Estates forfeited by those Persons.

By 4 *Georg.* All Honours, Lordships, Manors, &c. vested in his Majesty by the 1 *Georg.* are enacted to be vested in the Commissioners, to be sold for the Uses of the Publick; who are to proceed in a summary Way, determine Claims, &c.

The Commissioners, or any four of them, shall be taken for a Court of Record, and their Determinations shall be final; unless an Appeal be enter'd against any Judgment or Decree within twenty Days. And his Majesty may appoint any five of the Judges of *England*, *Scotland*, or *Ireland* to be a Court of Delegates in either of the said Kingdoms; which said Courts are to proceed as soon as may be to finally hear and determine Appeals, and affirm or alter Judgments, &c.

The Decrees of the Delegates shall be absolutely final and binding to all Persons claiming, &c. And if any Person fraudulently make any Claim by or under any forged Deed, Mortgage, &c. and the same is adjudg'd against him in a Court of Delegates, he shall forfeit the Value of the Estate, Debt, &c. wrongfully claim'd, to be ascertain'd by the Commissioners.

The Commissioners are to sell the forfeited Estates vested in them, in the most beneficial Manner for the Use of the Publick; the Purchasers to be Protestants: Publick Notice to be given of the Time and Place of Sale, the Sale to be by Auction; and the Purchase-Money to be paid into the Exchequer.

The Commissioners, or any four of them, shall execute Indentures of Bargain and Sale to Purchasers, inroll'd in the Chancery; and Protestant Purchasers may retain the Estates purchas'd to them and their Heirs, &c. and be adjudg'd in actual Possession, &c.

Purchasers not paying their Contracts shall forfeit a fifth Part of the Consideration-Money agreed to be paid. The Commissioners may appoint Bailiffs, &c. on the forfeited Estates, taking Security, and administering Oaths, &c.

To prevent Frauds, the Commissioners have Power to summon and call to Account, Persons retaining Possession of any Part of Estates after Sequestration; inquire by Witnesses, &c. and settle Sums payable on Account of their Intromissions, &c. and in case of Refusal may Certify into the Exchequer, that the said Persons may be proceeded against.

Grants, Demises, Confirmations, &c. made or granted by attainted Persons, *bona Fide*, for valuable Considerations, before the Estates by Law became forfeited, shall be good and valid; provided the full and valuable Consideration paid, and the Receipt for the Money be prov'd. And Tenants of attainted Persons, who have paid their Rents before their Attainder, and other Accountants, shall be discharg'd.



When forfeited Estates are sold, the Creditors of Debts affecting such Estates, shall be first satisfied, their Claims being adjudg'd just and lawful.

And as a common Justice to all Persons, it is enacted, That where Houses, &c. have been burn'd and destroy'd in *Scotland*, or at *Preston*, the Damage shall be made good; the Sufferers proving the Loss before the Commissioners, and being well affected to his Majesty and his Government.

Crown-Lands in the Possession of attainted Persons, shall remain to the Crown.

The Statute made in the first Year of King *George*, empowers the Commissioners to enquire of Estates of Popish Recusants; (whereof two Thirds are liable to Forfeiture) and to send for Persons, Papers, and Records, &c. Estates given to superstitious Uses, are vested in the Crown for the Use of the Publick, and the Commissioners are to enquire in a summary Way of all such Estates, and to send for Trustees, Deeds, &c. Trustees, or others, discovering such Estates, are entitled to one fourth Part; and Trustees concealing, are liable to pay all the Profits of the Estates. The Commissioners to secure and sell all Goods, &c.

By the two Acts of King *George*, the Commissioners and Trustees are allow'd 1000 *l. per Annum* Salary, to be issu'd and paid at the Receipt of the Exchequer, out of the Money brought into the said Receipt for the publick Use, by Vertue of these Acts.

There are under the Commissioners, a Secretary, Register, Accountant, Solicitor, Surveyor, and other inferior Officers, who are appointed by the said Commissioners, and such Sums are paid for Salaries, &c. as the Commissioners of the Treasury shall judge necessary.

CHAP. XL

Of PUBLIC ACCOUNTS, Commissioners for  
Stating them appointed by Law; their Power,  
&c.

**A**N exorbitant Desire of Riches in Officers of  
Trust and Power is the Bane of Kingdoms,  
Commonwealths, and States; and this is an Evil;  
which in the Space of One hundred Years past has  
been more prevalent perhaps than in all the Ages  
of the World preceding; for not only *France* and  
*England* have had their corrupt Ministers, but like-  
wise the distant *Russian* Territories, and in all for-  
eign Countries the Offenders have met with very  
severe and exemplary Punishments.

For the Suppression of this great and growing  
Mischief, many Laws and Statutes have been  
made by the Legislative Powers, particularly in ap-  
pointing of Commissioners to enquire into and  
state the publick Accounts of the Nation; but as  
in Case of forfeited Estates, so with Regard to En-  
quiry into Corruptions, the Laws of Remedy are  
for the most part lately introduced.

I find no antient Act of Parliament for preven-  
tion of this Evil, but that of 6 *Hen. 4.* This Statute  
enacts, That immediately after the Sheriffs, Custo-  
mers, Controllers, and other the King's Officers,  
have accounted in the Exchequer, Commis-  
sions shall be sent down to certain Persons to en-  
quire

quire of their Accounts; and if they are detected of Fraud, they shall incur treble Damages, suffer Imprisonment, and not to be enlarged until they have made Fine at the Discretion of the Judges.

In the Reign of King *Charles* the Second, an Act pass'd for the more speedy and effectual bringing those Persons to Account, whose Accounts were excepted in the Act of Oblivion. 13 & 14 *Car. 2.*

During the Reign of King *William*, an Act was almost annually made, appointing and enabling Commissioners to examine and state the publick Accounts of the Kingdom; and as the said Acts contain'd generally the same Thing over again, I think it necessary to take particular Notice only of the 11 & 12 *W. 3.* which, if there be any Difference from the others, has the greatest Variety.

This Act was made for taking, examining and determining the Debts due to the Army, Navy, and for Transport-Service, and also an Account of the Prizes taken during the late War; and appoints Commissioners accordingly, who, or any three of them, were empower'd to act.

The Officers of the Exchequer, Secretary, and Treasurers at War, Pay-Masters of the Land-Forces, and all Agents, Officers, and others, are requir'd to observe and execute the Orders of the said Commissioners touching the said Accounts.

The Commissioners are to sit in *London, Westminster*, or the Suburbs; and have Power to send for Persons, Papers, and Records, for their Information, and to administer an Oath for Discovery of the Truth.

They shall first state the Arrears of Pay to the Officers who serv'd in the War against *France*, or in the Reduction of *Ireland*; and therein particularize, what Sums were for Clothing, what for Poudrage,

dage, and what for each Officer, Engineer or Gunner, over and above the Money paid such Officer, or to his Use, and certify the same to the Pay-Master of the Forces, who is to make out Debentures accordingly; and to transmit to the Trustees for Sale of the forfeited Estates in *Ireland*, a List of such Debentures.

Officers who receive Half-pay are to have their Accounts first determin'd, and Certificates and Debentures deliver'd them. The Commissioners are to state all Accounts of Money due for Transport-Service, and their Determinations to be final; and they shall make out Debentures and Certificates for what is owing to Persons for Transport-Service: They are to take an Account upon Oath of all Ships and Goods taken and condemn'd as Prize during the late War; and to state the Accounts of Money arising by the Deduction of one Day's Pay in the Year from each Regiment, Troop, and Company, for the Benefit of *Chelsea-College*, and make forth Certificates or Debentures, &c.

Tallies or Orders of Officers who serv'd in the Army, and others for Transport-Service, which have been assign'd or granted to Persons at under Rates, may be redeem'd by the said Officers and Owners, their Executors or Administrators, on Payment of the principal Sum, and Interest at 6 per Cent, discounting what has been receiv'd thereupon; but a Time is limited for the same, and no Redemption shall be allow'd, unless a Claim be entred in the Lord Mayor's Court.

Certificates shall not contain more than what is justly due to each Regiment; the Pay-Master is to make out the Debentures, and the Commissioners of the Treasury shall order the Form of the said Debentures, so as best to prevent any counterfeiting of the same.



The Commissioners are to give an Account in writing of their Proceedings upon this Act to the King and Parliament; they are to state the Accounts of his Majesty's Navy-Royal for adjusting that Debt; and all Accountants to his Majesty shall make their Accounts in the Exchequer, according to their usual Course.

Two of the first nam'd Commissioners are to be sworn for the faithful Discharge of their Trusts, before the Chancellor of the Exchequer, or Master of the Rolls; and the other Commissioners to be administred an Oath, by the said two first Commissioners. The Commissioners may employ such Clerks and Officers under them, as they think fit: And by this Act the Commissioners of the Treasury were to impress a Sum not exceeding 1500*l.* to such as the Commissioners should direct, out of the Duties appropriated for the Navy, Guards, and Garrisons, &c. for Clerks and Officers, and necessary Charges, with 400*l.* Salary to each Commissioner, without Account to be given, &c.

This is the Effect of 11 & 12 *W. 3.* and the 1 & 2 *Ann.* revive and continue the former Acts of Parliament for appointing Commissioners to take, examine, and determine the Debts due to the Army, &c.

By 9 & 10 *Ann.* the Commissioners for taking, examining, and stating the publick Accounts, are to examine into all Briberies or Corruptions in any Person concerning the Management of the Queen's Treasure. These Commissioners, by these Acts, are likewise to state, balance, and determine the Accounts of all the General Officers, and other Officers of the Army, and of the Train of Artillery, &c.

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The Commissioners may examine and state all Accounts of Money due for Clothing, Transport-Service, Sick and Wounded; which are not already adjusted; and all Determinations by them, or four of them, shall be final.

If it appear to the Commissioners, or four of them, that the Officers and Soldiers of any Regiment, Troop, or Company, have been accounted with for their Subsistence-Money, allow'd by the Queen's Regulation in their several Passages (except for the Forces serving in the *Low Countries* and *Newfoundland*) without any Deduction being made for the same for Sea-Provisions, the Arrears due to such Regiment, Troop, or Company, shall be certified, without any Deduction or Charge to be made for such Sea-Provisions.

The Writer of Tallies in the Exchequer, and the Clerk of the Pells, and all other Officers of the Exchequer, and the Secretary at War, &c. and every other Person whom the Commissioners shall think fit to examine, shall observe and execute such Orders as they, or any four of them, by writing under their Hands, shall direct: And the said Commissioners are to sit in some Place in *London* or *Westminster*; and to send their Precepts to any Person, and for any Books, Papers, Writings, or Records, for their Information, and to administer an Oath; and all the Queen's Officers are to obey and execute such Orders and Precepts as shall be sent to them by four of the said Commissioners, relating to the Accounts by them to be examin'd and stated: And they may employ Clerks, Messengers, and Officers, and administer to each of them an Oath for faithful Performance of his Trust.

The Commissioners are to be sworn in the same Manner as directed by 11 & 12 W. 3. and the Oath they are to take is as follows.

“ **I** A. B. do swear, That I will, according to the  
 “ best of my Skill and Knowledge, faithfully,  
 “ ly, impartially, and truly demean my self in  
 “ the Discharge of the Trust committed to me by  
 “ an Act of Parliament, intituled, *An Act for*  
 “ *appointing Commissioners to take, examine, and de-*  
 “ *termine the Debts due to the Army, to the Transport-*  
 “ *Service, and Sick and Wounded, according to the*  
 “ *Tenor and Purport of the said Act*, so that neither  
 “ the Publick, nor any Person concern’d in such  
 “ Accounts may be prejudic’d.

*So help me G O D.*

The Commissioners are to account, as by 11 &  
 12 W. 3. And none of them shall incur any Pen-  
 alty or Disability for putting this Act in Execu-  
 tion, or be deem’d incapable of Sitting and Voting  
 in Parliament.

The 1 Georg. mentions, in the Preamble, several  
 Arrears of Pay due to Officers who serv’d the late  
 Queen with great Honour, Courage, and Fidelity;  
 and to the End, that it may more fully appear  
 what the said Arrears of Pay, &c. do justly a-  
 mount unto, and that the Accounts thereof may  
 be stated, enacts, That Commissioners shall be  
 constituted, for taking and stating the Accounts,  
 Claims, and Demands of all the General Officers,  
 and other Officers, &c.

And divers Charges having been made upon the  
 Regiments serving abroad, for Subsistence, Cloths,  
 and Arms, which have been taken by the Enemy,  
 or lost at Sea, and for Recruits raised in England,  
 when at the same Time they were form’d compleat  
 abroad, by the Generals Directions, out of other  
 Regiments that were reduc’d, whereby it is be-  
 come impracticable for the Pay-Master to settle the  
 Credits

Credits of the several Regiments, the Commissioners, or any four of them, are authoris'd to take and state the Accounts of the Regiments of *Stanhope, Strafford, Nassau, Clayton, Munden, Hill, Stanwix, Tyrrel, Fielding, Wisbers, Hotbam, Harrison, Harvey, Pepper, Whetbam, &c.* and such other Regiments as shall appear to the said Commissioners to be in the like Case, for such Time as they are in Arrear and unpaid.

And the Commissioners are empower'd to give an additional Credit to the respective Regiments, for so much of the Charge made on them, for Subsistence, Cloths, or Arms, as shall appear to be for Subsistence, Cloths, &c. taken by the Enemy, or lost at Sea, and not otherwise paid. Provided it be manifested on Oath, That the said Regiments have been duly subsisted and clothed.

The Lords Commissioners of the Treasury are by this Act requir'd to pay the Sum of 3000 *l.* to such Persons as the Commissioners of Accounts shall direct, out of any Publick Money not appropriated to any particular Use, to be employ'd for Payment of Clerks, Officers, and other incident Charges; and also the Sum of 500 *l.* to every Commissioner, to be answer'd Quarterly.

But no Person appointed a Commissioner for putting this Act in Execution, shall be capable of holding any other Place or Employment of Profit under his Majesty, during the Continuance of the Commission.

By 3 *Georg.* on the disbanding of Regiments, or reducing of Companies, the Commissioners for stating the Debts due to the Army, are empower'd to state and determine all Demands arising by Contracts for Cloathing, where the Off-reckonings of the said disbanded Forces are insufficient.



It is provided by this Act, That where any Person shall have paid any Sums of Money on Account of the Pay of any Officer of the Army, and that the same is duly charg'd to the Account of the Pay of such Officer, whereby the Government has Credit for the said Sums, but not made Payments to the Persons advancing the same to such Officer, the Commissioners, or any four of them, shall make out a Certificate, and the Pay-Master issue a Debenture for the Money, in the Name of the Person lending it; but so as with other Money charg'd on such Officers, not to exceed the Pay allow'd by the Establishments or Warrants. And Debentures are to carry Interest after the rate of 4  $\frac{1}{2}$  per Cent, per Annum.

No Process shall issue out of the Courts at Westminster, &c. for or concerning any Accounts relating to the Army, other than for the Recovery of such Balance as shall be adjusted by the Commissioners.

Ann<sup>o</sup> 4 Georg<sup>e</sup>, an Act was made appointing Commissioners to take, state, and determine Debts due to the Army; and also to examine and state the Demands of several Foreign Princes and States for Subsidies during the late War.

This Statute continues the former Acts for stating the Debts of the Army; and declares, That the several Acts, and every Clause, Matter, and Thing, contain'd in them, or any of them, not hereby alter'd, shall be reviv'd and continu'd in full Force.

And there are no Alterations in this Act from the Clauses mention'd in the preceding ones, but there are two additional Clauses worthy Notice,

The

The first relates to the Charge of transporting Regiments to *Ireland*, on their being transferr'd thither from the *British* Establishment; and empowers the Commissioners to examine and determine the Amount of the Expence of Transportation, &c. which fell a Charge upon the personal Pay of the Officers, and to certify the same to the Pay-Masters, who shall thereupon make out Debentures to the Parties concern'd, in order to their Satisfaction.

As to the last Clause, it concerns Demands of Foreign Princes and States; and enacts, That the Commissioners shall examine and state such Demands, by Vertue of Treaties or Conventions, for Arrears of Pay due to the Troops which continu'd with the Confederate Army of the Allies, and separated themselves from the late Duke of *Ormond*, &c. And also of Subsidies incurr'd before his Majesty's Accession to the Throne; and to report a State thereof to the King, and both Houses of Parliament. But the said Commissioners are not to proceed to take, examine, and state any other of the said Demands, than such as his Majesty shall signify unto them by Warrant under the Sign Manual.

The Sum of 3000 *l.* is likewise order'd by this Act to defray the Expence of Clerks, &c. and 500 *l.* for each Commissioner. The Commissioners have under them a Secretary, who, I think, is allow'd 200 *l.* per Ann. three Clerks 100 *l.* per Ann. each, and three Under-Clerks 40 *l.* a Year.

## C H A P. XII.

*Of the NAVY-ROYAL, and NAVY-OFFICE; Orders for Government of the Fleet; Commissioners of the Admiralty, Navy, and other Officers, and their Salaries, &c.*

OUR *English* Navy (Sir *Edward Coke* tells us) excels all others in the World for three Things, *viz.* Beauty, Strength, and Safety: For Beauty our Ships of War are so many floating Palaces, for Strength so many moving Castles, and for Safety they are the most defensive Walls of the Land: And in respect to Shipping of other Nations, they are like Lions *inter pecora Campi*.

It is our Naval Power that gains us Reputation and Authority in the most distant parts of the World; the Superiority of our Fleet above other Nations, renders the *British* Monarch the Arbiter of *Europe*; and to him oppressed Princes and States apply themselves for Mediation, Justice and Protection.

The *English* Squadrons no sooner appear, but the greatest Fleets and Armado's of the most formidable Potentates, pay them Homage and Obedience: This Honour and Dominion of the Seas, has been transmitted down to us from the famous *Arthur*; and both our *Saxon* and *Norman* Kings, and all our Monarchs from the

the earliest of Times, have strenuously asserted their Rights and Prerogatives to the Duty of the Flag.

King *Edgar* styled himself Sovereign of the Narrow Seas; and as an Acknowledgment of his Sovereignty, was rowed in a Boat by eight Kings and Princes of Foreign Nations; a Marine Triumph no where to be parallel'd.

King *Edward* the Third, made some excellent Constitutions concerning Maritime Affairs; and some Authors mention a Court of Admiralty erected in his Reign; but most Writers agree that King *Henry* the Eighth was the first that began to build a Navy-Royal in *England*. He built a Ship called the *Great Henry*, of 1000 Tun, the largest that ever had been then seen in *England*; he fitted out a Royal Fleet, constituted a Navy-Office, and appointed Commissioners.

In this King's Reign, and the Reign of Queen *Elizabeth*, our Navy-Royal was in a most flourishing Condition; being mostly commanded by our valiant Nobility; and 'tis remarkable, that there are Lists of the Fleet of Queen *Elizabeth*, which demonstrate that there was but one private Gentleman a Captain, all the rest being Lords and Knights: So high was the Esteem for Service at Sea in those Days, when our Princes ruled with the most consummate Honour and Glory.

The Merchants of *London*, in the Reign of King *James* the First, built a Ship of 1200 Tuns for their *East-India* Trade; which being lost, King *James* caused another to be built of 1400 Tuns, (a Ship of prodigious Dimensions at that Time) which was named the *Prince*; but now our First-Rate Ships of War contain at least 2000 Tuns, are mounted with above 100 Cannon, carry above 1000 Men, and cost each fifty or sixty thousand Pounds the Building.

In



In ancient Times the several Counties of *England* were liable to Taxation for building of Ships of War, and fitting out Fleets to Sea, every one in proportion to their Extent and Riches, so that the largest Counties were each of them to furnish a First-Rate Man of War, and the others every one to build one in Proportion to their Ability.

But this Method has been long disused, and the fitting out our Navy for many Ages, has been always thrown into the Publick Charge. In the 9 & 10 Year of the Reign of King *William*, five hundred and seventy thousand Pounds was appropriated for Building, and for Guns, Rigging and Furnishing of 27 Ships of War, out of the Money arising by the Duties of Excise, and a Poll-Tax: And this is the usual way of equipping our Fleets.

The Navy-Royal of *Great Britain*, requires about 35,000 Mariners: And of late Years the Parliament has allowed 40,000 Men for every Summer's Expedition. By 7 & 8 *W.* 3. as an Encouragement to Mariners to man the Fleet, it is enacted, That all Seamen, Watermen, &c. above the Age of eighteen Years, and under fifty, and capable of Sea-Service, who shall register themselves voluntarily for the King's Service in the Navy-Royal, to the Number of thirty thousand, shall have paid to them the Annual Sum or Bounty of 40 *s.* besides their Pay for actual Service, and that whether they be in Service or not.

This Statute likewise enacts, That none but such Mariners, Watermen, &c. as are registred, shall be capable of any Preferment in the Fleet: And such registred Persons are entitled to a double Part or Share of Prizes more than an unregistred Seaman; they are exempted from serving Parish-Offices; from Service Aboard after the Age of fifty-five, unless they go voluntarily; and when by Age, Wounds,

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Wounds, or other Accidents, they are disabled for future Service at Sea, they shall be admitted into *Greenwich* Hospital, and there provided for during Life, at the Charge of the said Hospital. And the Widows of such Seamen who shall be slain or drowned, not of Ability to provide for themselves, shall be likewise admitted into the said Hospital, and their Children educated, &c.

This is the Substance of the Statute concerning this excellent Foundation; but if any registred Seaman shall withdraw himself from the King's Service, in his Ships or Navy; or if any such Mariner shall relinquish his Majesty's Service, without the Consent of the Lord High Admiral, or Commissioners of the Admiralty, then shall such Person for ever lose the Benefit of the Act, and be compelled to serve in his Majesty's Fleet for six Months without any Pay.

And by a subsequent Act, Watermen, Barge-men, &c. working between *Gravesend* and *Windsor*, on Notice given by the Commissioners of the Admiralty to the Company of Watermen, are to appear before the said Company to be sent to his Majesty's Fleet; or on Refusal, they shall suffer one Month's Imprisonment, and be disabled working on the *Thames* for two Years.

Every Seaman whatsoever serving the King, or any other Person in any Ship belonging to the Subjects of *England*, or the Dominions thereof, shall allow out of his Wages 6 *d.* per Month, for the better Support of *Greenwich* Hospital: And by 1 *Jac.* 2. a Duty of 5 *s.* per Tun was granted on all Foreign Ships, one Moiety for the Chest at *Chatham*, and the other for *Greenwich* Hospital, to relieve decayed Seamen, &c.

Besides Registering of Seamen, the Grand Nursery, there are other Ways and Means of supplying

ing and furnishing of Mariners for the Navy-Royal, and also the training up of Persons in the Sea-Service.

For the 2 *Ann.* enacts, That poor Boys, whose Parents are chargeable to the Parish, may by Churchwardens and Overseers of the Poor, with the Consent of two Justices of Peace, be placed out Apprentices to the Sea-Service, until the Age of one and twenty; they being thirteen Years old at the Time of their placing forth.

These at eighteen Years of Age may be impressed for the Fleet, when the Owners or Masters of such of them as shall prove qualified, shall have able Seaman's Wages: And for the making this Law more effectual, all Masters or Owners of Vessels, from thirty to fifty Tuns Burthen, are required to take one such Apprentice; one more for the next fifty Tun, and one more for every hundred Tun above the first hundred, under the Penalty of 10*l.* for every Offence.

Masters of Apprentices placed out by the Parish, may with the Consent of two Justices, turn over such Apprentices to Masters of Ships for the Remainder of their Terms. Lewd and disorderly Servants, Rogues, Vagabonds, &c. are to be taken up and sent to the Fleet; and poor Prisoners for Debt, &c. which were to have the Benefit of 4 & 5 *Annæ*, appearing on their Discharge to be able-bodied Seamen or Landmen, were to enter themselves in the Service.

Thus is the Navy recruited with Mariners, not to mention particularly the manner of Pressing in Cities and populous Towns on extraordinary Occasions: I shall next proceed to Cruisers and Convoys, &c. and conclude with Orders for Government of the Fleet, and the whole Navy-Royal.

By the 6 *Anna* it is enacted, That over and above the Ships of War for the Line of Battle, 43 Ships of War shall be employed as Cruizers and Convoys, for the better preserving such Ships as shall be made Use of in the Trade of *Great Britain*: Four of these Ships are to be Third-Rates, and sixteen Fourth-Rates, and the rest of sufficient Force to guard our Commerce; and they are to cruize and attend in such Stations as the Lord High Admiral, or the Commissioners of the Admiralty shall direct.

The Lord High Admiral or Commissioners of the Admiralty, may direct the Commissioners of the Navy, or some one or more Persons resident at such Places as her Majesty shall appoint, to superintend and oversee every Thing relating to these Cruizers: And the Lord High Admiral, &c. may order any of the said Ships to be employed in the Line of Battel, in a Case of Necessity.

This Statute also empowers the Lord High Admiral, or Commissioners of the Admiralty, during the War, to grant Commissions to Privateers and Commanders of Ships for the taking and seizing Ships and Goods of Enemies. Then there are Letters of Marque and Reprisal granted to Merchants for Reparation at Sea; and extraordinary Reprisals, grantable by the Secretaries of State, &c.

And during the late War with *France* it was enacted, That her Majesty might grant Commissions to any Persons or Societies for the taking any Ships, Goods, Harbours, Lands, or Fortifications of Enemies in *America*, and for the Enjoyment thereof though the War be ended.

Before a Commission is granted to any Privateer, the Commander is to give Security to make Satisfaction for all Damages or Injuries which they shall commit in their Courses at Sea contrary to Treaties:



Trearies: And during the late War with *France*, all Vessels with their Ladings taken as Prize, were to be brought into some Port, and put into the Possession of the Commissioners of Prizes; and after adjudged Prize, Distribution was to be made as follows, *viz.* Four Parts in five of the Products was to go to the Persons interested in the Privateer, and the fifth Part to his Majesty: And the Ship with the Furniture was likewise to belong to the Persons interested in the Privateer. 4 & 5 W. & M.

But if any Persons shall imbezil any of the Goods taken as Prize, they shall forfeit their Shares. This Act likewise gives as a farther Encouragement for the taking of Prizes, in Case of a *French* Man of War or Privateer, 10 *l.* for every Piece of Ordnance, and 5 *l.* for every Man which was living at the Time of the Engagement, in the Ship taken or destroyed.

The 6 *Ann.* enacts, That if any Ship of War, Privateer, &c. shall be taken as Prize by any of her Majesty's Men of War, &c. the Officers and Seamen on Board after Condemnation, are to have the sole Property in such Prize to their own Use, to be divided according to the Proportion directed by Proclamation to be issued for that Purpose. But by the 4 & 5 W. & M. where Prizes shall not be taken by any private Man of War, one tenth Part before any Division is made, shall be paid to the Treasurer of the Navy, and kept apart for Medals and other Rewards for Officers and Seamen who shall do any extraordinary Service.

The Commissioners of the Navy, the Treasurer, Controller, &c. have Power to examine and punish all Persons who make any Disturbance, Fighting, or Quarrelling in the Yards, Store-houses, or Offices of the Navy; and by Warrant under their

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Hands and Seals may cause Search to be made for his Majesty's Stores and Ammunition belonging to the Navy, lost or mislaid. 19 Car. 2.

By 9 & 10 W. 3. No Person shall make any Stores of War, Naval Stores, &c. with the Marks commonly used to his Majesty's Stores, but the Contractors with the Commissioners, under the Penalty of 200 *l.* This Statute was made for preventing the Imbezilment of Stores of War. And by 3 Anne, for the Encreasing and Preservation of Naval Stores, two thousand Acres of waste Land in the *New Forest* in *Hampshire*, is ordered to be enclosed for the Growth of Timber: And Persons importing from the Plantations in *America*, any Naval Stores, shall have as an Encouragement a *Premium* paid by the Commissioners of the Navy, for good Pitch and Tar *per Tun* 4 *l.* good Rozin or Turpentine 3 *l.* *per Tun.* Hemp 6 *l.* and Masts, Yards, Bowsprits, &c. 1 *l.* *per Tun.*

Now I have treated of Cruizers and Convoys, &c. subject to extraordinary Commissions; and Naval Stores, which are preparatory to the fitting out of Fleets and Squadrons, I come to our Great Fleet, or Navy-Royal of Great Britain.

When the Royal Fleet is compleat, the same is usually divided into three Squadrons, distinguished by the different Colours of the several Flags, *viz.* Red, White, and Blue; the principal Commanders bear the Title of Admiral, and each has under him a Vice-Admiral, and a Rear-Admiral, who are likewise Flag-Officers.

In the Reign of King *Charles* the Second, an Act passed for Regulating the Government of the Fleet; which contains the particular Articles and Orders following.

1. Officers are to cause the Worship of God to be performed in their Ships.
2. To punish Swearing, Cursing, Drunkenness, &c. by Fine and Imprisonment.
3. If any Person on Board give Intelligence to an Enemy or Rebel, he shall suffer Death.
4. Not acquainting a superior Officer with any Letter or Message, from an Enemy or Rebel, to be punished with Death, or Imprisonment, at the Discretion of a Court-Martial.
5. Relieving an Enemy or Rebel, punished with Death.
6. Writings found aboard any Prize, to be sent to the Court of Admiralty, under the Penalty of forfeiting the Taker's Shares.
7. None shall take any Goods out of a Ship seized as Prize, till Judgment is obtained in the Admiralty, on Pain of Punishment by a Court-Martial.
8. Stealing any of the Ship's Furniture, &c. punished with Death.
9. Officers and Mariners of Ships taken as Prize, not to be ill treated where they make no Resistance.
10. Commanders of Men of War, not putting Things in Posture for Fighting, and encouraging their Men; shall be cashier'd; and if they yield or crave Quarter, they shall suffer Death.
11. Orders to be observed on Pain of Death.
12. Officers, &c. not using their utmost Endeavours to distress the Enemy in Time of Fight, and to relieve the King's Ships, shall suffer Death.
13. Captains, &c. appointed for Convoy, not defending the Ships in their Convoy, to suffer Death, or such other Punishment as a Court-Martial shall inflict.

14. Captains not pursuing an Enemy flying, or relieving a known Friend in View, to suffer Death.

15. Turning to, and running away from an Enemy, to suffer Death.

16. Discouraging Service and Action commanded on pretence of Wages, is punishable with Death.

17. Desertion, and enticing others, punished with Death.

18. All Spies to suffer Death.

19. Sedition and Mutiny are punished with Death.

20. Traiterous Words, and traiterous and mutinous Practices, to be revealed to Superiors, on Pain of Punishment by Court-Martial.

21. Quarrelling with a Superior is punished by a severe Imprisonment; and Striking, with Death.

22. None shall privately attempt to make Disturbance, on pain of such Punishment as a Court-Martial, &c.

23. Quarrelling, Fighting, and provoking Speeches, punished with Imprisonment.

24. No Waste nor Imbezillment to be made of any of the Stores in the Fleet, on pain of Fine and Imprisonment.

25. Stranding or hazarding any of the King's Ships by Default of Commanders, &c. punished by a Court-Martial by Fine and Imprisonment.

26. Persons setting on Fire any Ship voluntarily, not appertaining to an Enemy, shall suffer Death.

27. Sleeping on the Watch, or quitting the Station assigned, punishable with Death.

28. Murder, punished with Death.

29. Robbery and Theft punishable with Death.

30. Sodomy and Buggery, to be punished with Death without Mercy.



31. Provost-Marshal's refusing to receive a Prisoner, or suffering him to escape, to suffer such Punishment as would have been inflicted on the Party.

32. All Persons shall assist in the Apprehension of an Offender, on pain of Punishment by a Court-Martial.

33. All Misdemeanors not here mentioned, shall be punished according to the Laws and Customs used at Sea.

34. The Admiral may grant Commissions to Vice-Admirals, and Commanders of Squadrons to call Courts-Martial. But no Court-Martial shall have Power to punish with Death, that consists of less than five Captains: And no Execution of any Sentence of Death shall be had without Leave of the Admiral or Commander of the Squadron, except in Case of Mutiny.

35. The Judge Advocate, &c. may administer Oaths on any Trial by Court-Martial.

36. This Act is only to extend to Offences committed on the main Sea, or great Rivers beneath the Bridges near the Sea, within the Jurisdiction of the Admiralty, by Persons in the Service and Pay of the Fleet or Ships of War.

This is a concise Abridgment of the Orders for Government of the Fleet, made in the Reign of King *Charles* the Second. And the 5 & 6 *W. & M.* enacts, That all Offences done and committed contrary to the preceding Statute, may be tried in the Court of King's Bench *Westminster*, or before Justices of *Oyer and Terminer*; but if the Offender be tried by a Court-Martial, he shall not be tried again for the same Offence.

For the management of the Navy Royal, there are several Officers of Trust and Authority besides the Commissioners of the Admiralty; as the Treasurer, Controller, Surveyor, Commissioners of the Navy, Commissioners of the Victualling-Office, &c.

The Lords Commissioners for executing the Office of Lord High Admiral have, the first Commissioner 3000 *l. per Annum*, and the four others 1000 *l.* their Secretary 800 *l. per Annum*. Chief Clerk 400 *l.* Salaries.

The Treasurer; (whose Office is to pay the Charges of the Navy out of the Exchequer, upon a Warrant from the Treasury and principal Officers of the Admiralty.) His yearly Salary is 2000 *l. per Ann.* he has under him a Pay-Master at 500 *l.* a Year, and a Cash-keeper and Accomptant, who has 400 *l. per Annum*.

The Controller's Business is to controul all Payments of Wages; to examine and audit Accompts; and to enquire into the Rates of Stores for Shipping; his Salary is 500 *l. per Annum*; there are three Controllers at the same Salary, *viz.* of the Treasury Accompts, Victuallers Accompts, and Store-keepers Accompts.

The Surveyor is to examine into the State of all Stores, and see the Wants supplied; to survey Hulks, Masts, and Yards, and estimate Repairs; to charge Boatswains and Carpenters with Stores, and audit their Accompts, &c. his yearly Salary is also 500 *l. per Annum*.

The Clerk of the Acts records all Orders, Contracts, Bills, Warrants, &c. his Salary is 500 *l. per Annum*.

And he has an Assistant at 300 *l. per Annum*, the Controller has likewise an Assistant at the same Salary.

There are five Commissioners of the Navy; one whereof resides at *Portsmouth*, another at *Chatham*, and a third at *Plymouth*; their Salaries are 500 *l. per Annum*.

For Victualling the Navy, there are also Commissioners who have each 400 *l. per Annum*, their Secretary 200 *l.* and Accomptant 120 *l. per Annum*, Agents at several Places 200 *l.*

Commissioners for the Transport-Service; and Commissioners to take care of the Sick and Wounded, have 300 *l. per Annum*, their Secretary 100 *l. per Annum, &c.*

And in Time of War the Commissioners for Prizes, have each of them 500 *l.* a Year, their Secretary and Treasurer 400 *l.* Controller 300 *l.* Accomptants 120 *l.* and Sub-Commissioners at several Places 300 *l. per Annum*.

There are belonging to his Majesty's Navy, six great Yards, viz. *Chatham*, *Deptford*, *Woolwich*, *Portsmouth*, *Sheereneß* and *Plymouth*, fitted with several Docks, Wharfs, &c. and furnished with Stores of Timber, Masts, Anchors, Cables, &c. and in several of them are great Rope-Yards.

To each Yard there are several Officers, particularly a Clerk of the Cheque, who has at *Deptford*, *Chatham* and *Portsmouth*, a Salary of 200 *l. per Annum*; other Yards 150 *l.* a Store-keeper 150 *l.* a Clerk of the Survey, two Master Attendants, and a Master Shipwright, all at 150 *l. per Annum*; and two Assistants 100 *l. per Annum* each.

The Principal Officers and Commissioners of the Navy, hold their Offices by Patent under the Great Seal. And since the very great Encrease of the Navy-Royal, they have a great many Clerks under them for the Dispatch of Business, with Salaries allowed by the King: The Chiefs whereof have 100 *l.* per *Annum*, and there are numerous other Clerks at 80 *l.* 60 *l.* 50 *l.* and 40 *l.* per *Annum*.

An Admiral of the Fleet has five Pounds a Day.



## C H A P. XIII.

*Of the Laws of WAR, the Soldiery of GREAT  
BRITAIN, Secretary at War, Officers, &c.  
And also of the Ordnance, &c.*

IT is entirely needless to have any Encomiums on the Courage and Conduct of the *British* Forces; 'tis enough to say, that in this Age they have conquered a Prince who thought his Arms invincible: A mighty *Lewis* has been subdued, who aimed at Universal Monarchy.

In the Reign of the hapless *Charles*, when Civil Discord grew to an unexampled Height, it was computed, that there were not fewer than 200,000 Foot, and 50,000 Horse in Arms on both Sides, which was an Army, considering it composed of *Britains*, sufficient to have shaken *Europe*; but such was the Obstinacy of those Times, that this extraordinary Host was fatally employed in the Destruction of our own Country, and the pious Monarch fell a Sacrifice to its Fury.

In ancient Times when the Kings of *England* were to be served with Soldiers in their Wars, a Knight or Esquire that had Revenues, Farmers and Tenants, would covenant with the King by Indenture inrolled in the Exchequer, to furnish him with such a Number of military Men; and those Men were to serve under him, whom they knew and honoured, and with whom they must live at their Return. *Co. Litt.* 71.

This

This was an excellent Institution ; but we have had many Statutes which have altered this Method of Recruiting the Army, by introducing the Lifting of Soldiers, and retaining them by Vertue of Money paid and advanced.

This Money advanced has been usually 20 s. but in the late Reign, when the long Continuance of the War had rendred a very great Scarcity of Recruits, 40 s. and afterwards 4 l. was given to every Soldier voluntarily lifting.

The Justices of Peace were empowered to send Warrants to Constables, to bring before them such able-bodied Men in their Divisions, which had not any Vote for electing Members of Parliament, or lawful Employments, or visible Means for their Maintenance and Livelihood; and the Persons so brought were to be delivered over to the Officers of the Army, and every Constable was to have 20 s. for each Man.

By an ancient Statute it is Felony for a Soldier to depart from his Colours without Licence. And by 1 & 3 Geo. If any Officer or Soldier in the Army shall join in any Mutiny, or desert the Service, or hold Correspondence with Rebels or Enemies, or not obey Orders of superior Officers, &c. they shall suffer Death, or such other Punishment as shall be inflicted by a Court-Martial. And here it may not be amiss to give you an Abstract of these Acts of Parliament.

First, The King or the General of his Army may grant a Commission to call a Court-Martial, which is to consist of thirteen Persons, none whereof to be under the Degree of a Commission-Officer, and the President to be either a Field-Officer, or the then Commander in Chief of the Garrison where the Offender shall be tried.

Officers

Officers present at Courts Martial, where the Offence may be punished by Death, are to take an Oath well and truly to try and determine according to Evidence, &c. They are to proceed to Trial in the Morning, and nine of the Officers present shall concur in the Sentence.

If any Person shall procure a false Certificate to excuse any Soldier for his Absence from any Muster, he shall forfeit 50 *l.* and Muster-Masters making a false Muster, or mustering Persons by wrong Names; a Commissary, Muster-Master, or other Officer, allowing or signing the Muster-Rolls where in such false Muster is contained, shall lose his Office, be disabled to hold any Office Civil or Military, and shall forfeit 100 *l.* But fictitious Names allowed by his Majesty's Order upon the Muster-Rolls, for the Maintenance of Officers Widows, shall not be construed a false Muster.

Muster-Rolls are to be signed by Mayors or chief Magistrates of the Places where the Soldiers are mustered, who are to be present and give their Assistance for the Discovery of false Musters; and if the Muster-Masters do not give Notice to such Mayors, &c. to be present, and sign the Rolls, they shall forfeit 50 *l.* and be discharged from their Offices.

All Muster-Masters are to close their Muster-Rolls upon the Place the same Day the Muster is taken, and are to return one of the said Rolls in Parchment to the Pay-master-General, and another to the Controller of the Accompts of the Army, immediately after the Rolls are closed, if within twenty Miles of *London*, and if at a greater Distance, by the next Post; on pain of forfeiting their Places, and the Sum of 20 *l.*

And if any Person shall permit himself to be falsely mustered, upon Proof thereof by two Witnesses before

before the next Justice of Peace, and Certificate by the Commissary of the Musters, such Person shall be committed to the House of Correction for ten Days; and be taken to be a listed Soldier to all Intents and Purposes; and if any Person shall lend him a Horse, the Horse so false mustered shall be forfeited, if the same belong to the Person lending it; otherwise the Lender shall forfeit the Sum of 20 *l*.

Constables and Tithingmen, and chief Officers and Magistrates of Towns are to billet and quarter Officers and Soldiers on Persons keeping Inns, Livery-Stables, Ale-houses, Victualling-houses, and Houses selling Brandy, strong Waters, Cyder, or Metheglin, by Retail (except Distillers and Shopkeepers who do not permit Tipling in their Houses) and not on private Houses; nor shall any more Billets at any Time be ordered than there are effective Soldiers. And if any Officer shall quarter Soldiers otherwise, he shall be *ipso facto* cashiered, and be disabled to hold any military Employment.

Officers Quartering their Wives, Children, or Maid-Servants, on any Persons without their Consent; or taking Money of Persons for excusing the Quartering of Soldiers, shall be cashiered; and Persons aggrieved by having a greater Number of Soldiers than they ought to have, may be relieved on making Complaint to one or more Justices; who have Power to impose a Fine not exceeding 5 *l*. nor under 40 *s*. for Neglects of Constables, &c. refusing to billet Soldiers, and Victuallers, &c. refusing to receive them. But *Epsom* and other Places where medicinal Waters are used, are exempted from Quartering of Soldiers.

Officers and Soldiers are to pay such reasonable Prices for Provisions in their Quarters, &c. as shall be set by Justices of Peace in their Quarter-Sessions.  
And



And Pay-masters and Agents detaining the Pay of Officers or Soldiers for the space of one Month after received by them, shall be discharged from their Employments, and forfeit 100 *l*.

And no Pay-master, &c. shall make any Deduction out of an Officer or Soldier's Pay, other than the usual Deductions for Clothing, and the 12 *d*. in the Pound to be disposed as his Majesty shall think fit, and the one Day's Pay in the Year for the Use of the Royal Hospital at *Chelsea*.

Officers immediately upon Receipt of Pay, are to give publick Notice of it to all Inn-keepers, Ale-house-keepers, &c. where Officers or Soldiers are quartered; and shall appoint them to repair to their Quarters at a Time limited for Distribution of the Pay, which is to be within four Days after Receipt of the Money, and the said Inn-keepers, &c. are to give in their Accompts, which are to be first paid, before the Officer distributes any part of the Subsistence-Money.

Officers neglecting to give Notice, or to pay the Money as aforesaid, the same shall be satisfied out of the Arrears of such Officer, and he shall be cashiered. But if an Officer shall not receive the Subsistence-Money, or on the March when it cannot be remitted, he is to make up Accompts with the Inn-keepers, &c. and give them a signed Certificate thereof, when it shall be paid by the Pay-master of the Guards and Garrisons.

All Justices of Peace (being required by Order of his Majesty, or his General) are to issue out Warrants to Constables, Tithing-men, &c. to make a Provision of Carriages for the marching of Soldiers; and the Officers are to demand the Carriage of such Constables, &c. and to pay down in Hand 1 *s*. for every Mile any Waggon with five Horses shall travel, or any Wain with six Oxen,  
or

or four Oxen and two Horses; and 9 *d.* per Mile for every Cart with four Horses.

Officers constraining any Waggon or Carriage to travel more than one Day's Journey, or suffering Soldiers (except such as are sick) or Women, to ride in such Waggon, &c. or forcing Saddle-Horses from Owners, they shall forfeit the Sum of 5 *l.* and no Waggon is to carry more than twenty hundred Weight.

Constables neglecting to execute Justices Warrants for providing of Carriages, on the marching of Soldiers, or Persons refusing to provide Carriages, &c. are liable to a Penalty not exceeding 40 *s.* nor less than 10 *s.*

Officers or Soldiers in their Marches, &c. without Leave, killing any Hare, Pheasant, Partridge, Pidgeons, Poultry, &c. shall forfeit 5 *l.* the Officer, and 20 *s.* a Soldier for every Offence, to be paid by the Commanding Officer.

Soldiers wandering, suspected to be Deserters, may be apprehended by Constables or Tithingmen, and be carried before a Justice of Peace to be examined, and if it appear that such Person is a listed Soldier, and ought to be with his Company, the Justice shall commit him to Gaol, and transmit an Account thereof to the Secretary at War. And the Persons apprehending a Deserter shall have 20 *s.* Reward, payable out of the Land-Tax Money.

If any Person shall harbour or conceal a Deserter knowingly, or buy or exchange Arms, Cloths, or other Furniture belonging to his Majesty, or change the Colour of such Cloths, he shall forfeit the Sum of 5 *l.* But no Officer may break open a House to search for a Deserter without a Justice of Peace's Warrant, under the Penalty of 20 *l.*

No Soldier shall be allowed to be absent from his Quarters for above twenty Days in six Months, by any Furlow, unless signed by the Commander in Chief; Officers signing a Furlow for a longer Time, shall be liable to all the Soldiers Debts not exceeding 100 *l.* and the Soldier shall be sent to the Head Quarters of the Regiment, and punished as a Vagabond.

No private Centinel shall have a Protection by being a Soldier in any Regiment quartered in, or within five Miles of *London*, unless he personally and constantly do his Duty, or be excused by his Colonel; and if any Officer shall make a false Certificate of the Cause of Excuse, for a Person not doing his Duty in Turn, he shall forfeit the Sum of 20 *l.*

A Person listed, shall not be liable to be taken out of the Service by any Process, unless it be for some criminal Matter; (or by some Statutes, unless the Debt be of the Value of 10 *l.*) But the Plaintiff may nevertheless for Debt proceed to Judgment and Execution, other than against the Body of the Person listed, upon giving Notice of the Cause of Action, &c.

Soldiers which have been in the Land-Service three Years, may demand their Discharges of the Colonel of the Regiment.

No private Soldier listed, shall be discharged without the Consent of the Colonel of the Regiment, or of the Field-Officer in his Absence, and a Copy of the Cause shall be transmitted to the War-Office. And his Majesty may make and constitute under his Sign Manual, Articles of War, &c.

Pursuant to the Power reserved to the King of making Articles of War, the following Orders have been

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been established by his Majesty King George, for the better Government of the Land-Forces of Great Britain.

I. Officers and Soldiers are to frequent Divine Service in Places appointed, under the Penalty of 1 s. for every Offence in a Soldier, and an Officer to be reprehended by a Court-Martial.

II. Sutlers in Forts and Garrisons selling Liquors during the Time of Divine Service, are to be punished by the Civil Magistrate.

III. Officers or Soldiers using any unlawful Oath, shall incur the Penalties mentioned in the first Article.

IV. Blaspheming the Holy Trinity, or speaking against any Article of the Christian Faith, to be delivered over to the Civil Magistrate.

V. Prophaning any Place dedicated to the Worship of God, or abusing any Chaplain, &c. they shall be liable to such Penalty as shall be inflicted by a Court-Martial.

VI. Officers or Soldiers using traitorous or disrespectful Words against the King, Prince, &c. or behaving contemptuously towards a General, &c. to be punished by a Court-Martial.

VII. If any Officer or Soldier shall excite or join in any Mutiny, he shall suffer Death; and Officers not using their utmost Endeavours to suppress a Mutiny, shall be cashiered, and Soldiers severely punished by a Court-Martial.

VIII. Officers or Soldiers refusing to obey Orders, are to be punished with Death, or as a Court-Martial shall determine.

IX. Officers resisting their superior Officers shall be cashiered; and Soldiers striking their Officers, shall have corporal Punishment as a Court-Martial, &c.

X. Officers



X. Officers or Soldiers who have received Pay, or been duly listed, deserting, shall be punished with Death.

XI. Non-Commission Officers and Soldiers are not to leave their Companies, &c. and enlist themselves in any other Company, &c. on pain of being reputed Deserters.

XII. Persons perswading a Soldier to desert, shall suffer such Punishment as shall be inflicted by a Court-Martial.

XIII. An Officer or Soldier committed to Prison, breaking from thence, is to be punished as a Deserter : And if an Officer, under Arrest, leave his Confinement before he is set at Liberty, he shall be cashiered.

XIV. Officers or Soldiers running away before an Enemy, or shamefully abandoning any Post, Guard, &c. or after a Victory quitting their Posts for Plunder, to suffer Death, or as a Court-Martial, &c.

XV. Publick Stores in the Enemies Camp, Towns, &c. are to be secured for his Majesty's Service.

XVI. Officers and Soldiers accused of any Capital Crime, Violence, &c. are to be delivered over to the Civil Magistrate ; except in *Gibraltar, Minorca, &c.* where we have no Form of Civil Judicature.

XVII. Commission Officers of every Regiment, by appointment of their Colonel, &c. shall hold Regimental Courts-Martial for punishing Crimes and Disorders : And the Court to consist of five commission'd Officers.

XVIII. If any Officer be wronged by his Colonel or the Commanding Officer, he is to exhibit a Complaint to the General ; and Wrongs of inferior Officers and Soldiers shall be redressed by the Officer

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Officer commanding the Regiment, at a Regimental Court-Martial.

XIX. No Officer or Soldier shall use reproachful Speeches or Gestures to another on pain of Imprisonment. And Officers sending Challenges to others shall be cashiered, and Soldiers suffer severe corporal Punishment. Officers have Power to quell Quarrels, Disorders, &c. made by Persons not of their Companies.

XX. A general Court-Martial is to consist of thirteen Commission Officers, &c. and the several Officers are to take an Oath, examine Witnesses on Oath, &c. *ut supra*.

XXI. Non-Commission Officers and Soldiers at the Time of their enlistment, are to take an Oath to serve the King faithfully in Defence of his Person, Crown, &c.

XXII. Officers making false Musters shall be cashiered; and where Officers or Soldiers are absent from Musters by reason of Sicknets, &c. or by Furlow, the commanding Officer is to produce Certificates of the Cause of Absence, &c.

XXIII. No Non-Commission Officer or Soldier, shall by Leave of his Captain, be absent from his Quarters above twenty Days in six Months.

XXIV. Commissions granted are to be entred in the Books of the Secretary at War.

XXV. No Commission Officer shall be cashiered but by Order from the King, or a General Court-Martial; but Non-Commission Officers may be discharged, or reduced to serve as private Men by a Regimental Court-Martial.

XXVI. No Non-Commission Officer or Soldier belonging to the Guards, shall keep any kind of publick House or Shop for selling Liquors, Victuals, &c.

XXVII. Sutlers in Forts, Garrisons, &c. are prohibited selling any kind of Liquors, &c. or to keep open House after nine at Night, or before the Beating of the Reveilles in the Morning.

XXVIII. Officers and Soldiers are to behave orderly in Quarters, and not commit any Waste or Spoil in Parks, Warrens, Corn-fields, &c. on Marches, unless to annoy Rebels and Enemies, on pain of Punishment by a Court-Martial.

XXIX. Officers are not to demand Billets for Quartering more than they have effective Men, nor take Money for freeing Landlords from Quartering of Soldiers, on pain of being cashiered.

XXX. Officers are to see their Quarters paid, and inspect the Quartering of Soldiers, &c.

XXXI. Officers on Marches, are to apply to proper Magistrates for Carriages, and to pay for them, not abuse Waggoners, &c.

XXXII. Officers commanding in Garrisons, Quarters, &c. are to keep good Orders, and redress Abuses; by making Reparation, &c. or they shall be liable to Punishment by a Court-Martial as if they had committed the Crimes.

XXXIII. No Officer or Soldier shall lie out of his Camp or Quarters without Leave, and every Soldier shall repair to his Quarters at the Beating of the Retreat.

XXXIV. If any Officer shall be found drunk on his Guard, he shall be cashiered: And a Non-Commission Officer or Soldier shall ride the Wooden Horse, &c.

XXXV. If any Centinel quit his Post, before he is relieved, or be found asleep, he shall run the Gauntlet by order of a Regimental Court-Martial.

XXXVI.

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XXXVI. No Soldier in the Guards shall hire others to do his Duty, or be excused but in Cases of Sickneſs, Leave, &c.

XXXVII. Officers or Soldiers not to fire their Arms, draw Swords, or make Alarms in Camps or Quarters.

XXXVIII. Offenders committed, to be puniſhed by a Regimental Court-Martial in eight Days, that they may not be too long hindered from their Duty.

XXXIX. Soldiers making known the Watch-word, or giving other Word on the Guard or the Patrole, than the Watch-word, ſhall be puniſhed by Court-Martial.

XL. Officers, Store-keepers, &c. imbezilling, or ſelling Stores, to be caſhiered; and Soldiers ſelling their Ammunition, &c. are to run the Gauntlet:

XLI. Non-Commiſſion Officers or Soldiers of Horſe, Dragoons, &c. who ſhall ſell, loſe or ſpoil their Horſes, Arms, Cloths, &c. ſhall be ſubject to a weekly Stoppage not exceeding one half of their Pay, and be further puniſhed by a Court-Martial.

XLII. No Officer on the Guard, or Provost-Martial, ſhall reſuſe to receive and keep any Priſoner committed; nor releaſe him without Orders; permit an Eſcape, &c.

XLIII. When any Commiſſion Officer ſhall happen to die or be killed in the Service, the Major of the Regiment ſhall ſecure his Effects, &c. and Captains are to take Accounts of what Soldiers die poſſeſſed of, over and above Regimental Cloths, &c.

XLIV. If any Officer or Soldier be accuſed of an Offence againſt the Perſon or Eſtate of another, puniſhable by the Civil Courts, ſuch Offender

ſhall



shall not be tried by a Court-Martial, unless at the Desire of the Party injured.

XLV. Officers of the Guards are to hold Courts-Martial, and take Rank according to their Commissions; and in Disputes between Officers and Soldiers of the Guards, and other Troops, &c. the Court-Martial is to be equally composed of Officers belonging to the Parties complaining and complained of; and the President to be ordered by Turns. Brevet Officers are to take Place in Courts-Martial and in Detachments, according to the Ranks given them in their Brevets, but not in their Regiments. The eldest Officer in Commission, is to command the whole on Marches, in Quarters, &c.

XLVI. These Articles are to be read at the Head of every Regiment, Troop and Company, once every two Months, &c.

By these excellent Laws are the *British Forces* governed: And as the preceding Articles conclude with the Guards, I shall here present my Reader with a concise Account of them.

There are three Regiments of Foot-Guards, four Troops of Horse, and two of Grenadiers for the Guard of the King's Person. The Horse and Grenadiers making at least 1000 Men, arm'd and equipped beyond any in *Europe*, and the Foot compose a Body of above 5000 Men.

Each of the three Troops are divided into four Squadrons, two of which consisting of 100 Gentlemen, and commanded by one Principal Commissioned Officer, two Brigadiers and two Sub-Brigadiers, with two Trumpets mount the Guard one Day in six, and are relieved by Turns. Their Duty is always by Parties from the Guard to attend the King; and one of the Captains constantly

waits

waits immediately next to the King's Person, where-soever his Majesty walks, carrying in his Hand a Staff or Truncheon having a Gold Head, engraved with his Majesty's Cypher and Crown.

One Division of Grenadiers mounts with a Division of the other Troops; they go on smaller Parties from the Guard, perform Centinel Duty on Foot, and attend the King also on Foot, when he walks abroad, &c.

A Captain's Pay of the first Troop of Guards is 1 *l.* 10 *s.* a Day, the other Captains 1 *l.* a Lieutenant 15 *s.* Cornet 14 *s.* Guidon 12 *s.* *per Diem*, &c. The Troops and Regiments of Guards are commanded by Noblemen.

The Captains of the King's Guards of Horse, by their Commissions always command in the Army as eldest Colonels of Horse; the Lieutenants as eldest Lieutenant-Colonels of Horse; the Cornets and Guidons as eldest Majors of Horse; the Quarter-Master as youngest Captains of Horse; and the Brigadiers as eldest Lieutenants of Horse: And next after the Troops of Guards his Majesty's Regiment of Horse takes Place, and the Colonel is to have Precedency after the Captains of the Guards, and before all other Colonels of Horse. The King's own Regiment of Foot-Guards also has Precedency of all other Regiments.

Other Regiments of Horse or Foot, not of the Guards, take Place according to their Standing from the Time they were first raised; and a Regiment loses not its Precedency by the Death or Removal of the Colonel.

The first Great Officer belonging to the Army, is the Pay-master-General of all the Land-Forces. The next are the Auditor of the Muster-Rolls; the Commissary General, who has under him eight Deputy Commissaries, and they are assigned so

many Cirouits over *England*, to take Care of all Musters; The Secretary at War, who has an Under Secretary, Chief Clerk, &c. The Judge-Advocate, Surgeon-General, &c.

Other Officers belong to the Ordnance; which for Government has a Master-General of the Ordnance, who has under him six principal Officers, viz. a Lieutenant, Surveyor, Clerk, Store-keeper, Clerk of the Deliveries, and a Treasurer.

The Master of the Ordnance is commonly the Captain General of the Army, and has a Salary of 1500 *l. per Annum*.

The Lieutenant-General of the Ordnance receives all Orders from the Master, and is to see them duly executed. He is to inspect the Train of Artillery, and issue Orders for discharging of Cannon on Days of Rejoicing. His Salary is 800 *l. a Year*.

The Surveyor-General of the Ordnance, who has the Charge of Surveying all the Ordnance and Stores, &c. his Salary is 400 *l. per Annum*.

The Clerk of the Ordnance records all Patents and Grants, and the Names of all Officers, &c. He also registers all Orders, draws all Estimates, Letters, Instructions, Commissions, Contracts, &c. makes all Bills of Imprest and Debentures, keeps Books of Account, &c. his Salary is likewise 400 *l. a Year*.

The Store-keeper takes into his Custody all the Ordnance and Stores; preserves the same in good Order; renders Accounts, &c. and is not to issue any Ordnance, Ammunition and Stores without an Order from the Master of the Ordnance, &c. he has a Salary of 400 *l. per Annum*.

The Clerk of the Deliveries, whose Office it is to draw up all Orders for delivering Stores, Provisions, &c. to see the same executed, and charge the

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the Receiver of the Stores; his Salary is 300 *l.* a Year.

And the Treasurer who pays all Salaries, Bills, &c. has 500 *l.* per Annum.

There is likewise a Secretary to the Master of the Ordnance, who has 200 *l.* per Annum.

Besides these, there is a Master-Gunner of England, who has 200 *l.* per Annum, a principal Engineer, who has 300 *l.* other Engineers 200 *l.* several Clerks under the principal Officers, who have Salaries from 100 *l.* to 50 *l.* per Annum. And Store-keepers at Chatham, Portsmouth, Plymouth, and other Fortifications, who are paid Salaries from 120 *l.* to 40 *l.* a Year, in proportion to their Business, &c.

The Governor of the Tower has a Salary of 1000 *l.* per Annum, the Lieutenant of the Tower 700 *l.* Deputy-Lieutenant 300 *l.* a Year.

Governor of the Isle of Wight has 500 *l.* per Annum, of Portsmouth 300 *l.* Lieutenant-Governor 200 *l.* of Sheerness, Plymouth, Tilbury, Tinnmouth, Kingston upon Hull, Berwick, &c. the same.

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## C H A P. XIV.

*Of the MILITIA and LIEUTENANCY  
of the Counties of ENGLAND.*

THE Militia of *England*, as a late Author has observed, is the Natural Strength, and in its Original Constitution the great Standing-Army of the Nation, in Case of Insurrection or Rebellion at Home, or Invasion from Abroad; and for the Well-government thereof, several good Laws have been made by the Senate.

The first is 13 Car. 2. which is declarative of the King's Right to the supreme Government of the Militia, and all Forces by Sea and Land, and that the Parliament cannot pretend to the same, or levy War, &c.

The 13 & 14 Car. 2. enacts, That the King, his Heirs and Successors, may from Time to Time issue Commissions of Lieutenancy in the several Counties and Cities of *England*; and the Lieutenants are empowered to call together Persons, arm and array them, form them into Companies, &c. and conduct and employ them in the suppressing of Insurrections, or repelling of Invasions in such Places as such Lieutenants shall be commissioned, or elsewhere, as they shall be necessary, and the King shall direct.

The Lords Lieutenants may give Commissions to Colonels, Majors, Captains, and other Officers, and present to the King the Names of such as they  
think

think fit to be Deputy-Lieutenants ; and upon his Approbation shall give them Deputations ; and the said Lieutenants, or in their Absence, the Deputy-Lieutenants, or any two or more of them may exercise and conduct the Persons so to be armed, &c.

The Lieutenants or their Deputies, three at least in Number, may charge Persons that have 500 *l.* *per Annum* in Possession, or 6000 *l.* in personal Estate, with a Horse, Horseman and Arms ; and those Persons that have 50 *l.* *per Annum*, or 600 *l.* in personal Estate, with a Foot-Soldier and Arms. And several Persons may be joined together in the Charge of finding a Horse, Horseman and Arms, but none shall be chargeable with a Horseman and Foot-Soldier too for the same Estate ; nor shall any Person having under 100 *l.* *per Annum*, or less than 1200 *l.* personal Estate, contribute in finding any Horse.

The said Lieutenants and Deputies may require an Allowance of 2 *s.* *per Diem* for Horsemen, and 1 *s.* a Day for Foot-Soldiers, if the Persons charged serve not in Person (which they cannot be obliged to do) for so many Days as they are out upon Duty, and may make Assessments for Ammunition and other Necessaries ; and in Case of Insurrection or Invasion, the Persons charged shall provide their Soldiers with Pay in Hand, not exceeding one Month's Pay, as shall be directed by the Lieutenancy, for Repayment of which, and of the Officers during such Time, not exceeding a Month, as they shall be in actual Service, Provision is to be made by the King out of the publick Treasure.

If any of the Militia make a Mutiny, or neglect their Duties at Musters, &c. the Lord Lieutenant, or Deputy-Lieutenants may imprison them ; and if they imbezil or detain their Horses or Furniture,

or

or appear not compleatly arm'd upon Summons, they may be imprisoned not exceeding five Days, and be fined, not exceeding 20 s. a Horseman, and 10 s. a Footman.

And if any Person assessed or charged, shall refuse or neglect to send in, or deliver his Horse, Arms, &c. upon Beat of Drum, Sound of Trumpet, or other Summons or Notice, the Lieutenants and their Deputies, or any three of them may inflict a Penalty not exceeding 5 £. to be levied by Distress and Sale of Goods, &c.

The Lord-Lieutenants or their Deputies may examine Persons upon Oath, touching the Ability of Persons to be charged. And if any Persons charged do not reside in the County, Notice shall be sent to their Servants that manage their Lands, or if the same be let, to one or two of the most sufficient Tenants, and upon any Neglect they shall be liable to the Penalties : But Peers shall not be charged otherwise than by Commission under the Great Seal, to twelve or more Peers, who, or five of them, are to assess the Peers according to the Proportions directed in this Act; and the Charge being certified to the Lieutenants, they may cause the same to be levied.

There shall be general Musters once a Year, and single Companies are to be trained four Times in a Year, and oftner by the Direction of the King or Privy Council : Single Companies are not to continue in Exercise above two Days, and none shall be constrained to stay above four Days at a general Muster, Every Musqueteer shall bring half a Pound of Powder, and every Horseman a quarter of a Pound ; the Arms for the Horse to be a broad Sword, a Case of Pistols, the Barrells whereof to be twelve Inches long, and a Carabine, with Belt and Bucket, a great Saddle with Burs and Straps,  
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a Bit and Bridle, with Pectoral and Crupper. And the Foot shall have Musquets five Foot long in the Barrel, the Gage to be of the Bore for Bullets of twelve to the Pound, with a Bayonet to fix in the Muzzle, a Cartouch-Box and a Sword. By 1 Geo.

By 13 & 14 Car. 2. All Persons serving in Person, who are to be approved by their Captain, and all Persons serving in others steads, are at the next Muster to give in their Names and Places of Abode, to be listed; and after such Listing, if they desert the Service, or are discharged without Leave of the Lord Lieutenant, two Deputy-Lieutenants, or their Captain, under Hand and Seal, they shall forfeit 20 l.

The Lords Lieutenants, or two or more of their Deputy-Lieutenants, may by Warrant employ Persons to search for, and seize Arms in the Custody of Persons as shall be adjudged dangerous, and secure them. But no Search shall be made without a Commission-Officer and a Constable or Tithing-man; and no Dwelling-house of a Peer is to be searched but by Warrant from the King, or in the Presence of the Lord Lieutenant, or one of his Deputies; and then in Case of Resistance it shall be lawful to enter with Force, and seize the Arms; but the Arms seized may be restored if the Lord Lieutenant, or two of the Deputy-Lieutenants think fit.

No Peer shall serve as Lord Lieutenant, or other Person as Deputy-Lieutenant, until they shall have taken the Oaths of Allegiance and Supremacy; and an Oath declaring it unlawful to take Arms against the King, &c. before six Lords of the Privy Council, or others authorized by the King.

The 15 Car. 2. empowers Lord Lieutenants and Deputies to inflict a Penalty not exceeding 5 l. on Persons refusing to provide Foot-Soldiers (by the former



former Act it is 20 *l.* Penalty not providing Horse and Furniture) and to appoint Constables to provide Persons for them, under the Penalty of 40 *s.*

Every commission'd Foot-Officer in the Militia, shall be excused from finding Horse or Foot, if he be chargeable but with one Horse or less; if with more, then for so much as shall be charged with one Horse.

No Persons that have real Estates of 200 *l. per Annum*, or personal Estates of 2400 *l.* shall be charged with Foot; but they that have 100 *l. per Annum*, or 1200 *l.* and under 200 *l. per Annum*, or 2400 *l.* in Money, &c. may be charged to either Foot or Horse; but this is not to make any Alteration concerning the Forces to be raised in Cities, Corporations, and Port-Towns.

Once a Year every Soldier shall pay to his Muster-master such Sum, not exceeding 1 *s.* for a Horseman, and 6 *d.* for a Footman, as the Lord Lieutenants and Deputy-Lieutenants, or three of them, under Hand and Seal shall direct; who may levy it by Distress and Sale of Goods on the Persons chargeable, unless the Default be through the Negligence of the Soldier, who in that Case is to be accountable for the same.

The Muster-masters are to be resident in the respective Counties: And the Soldiers raised by virtue of this Act, shall be subject to all Orders of the former Act, and be under the Penalties therein expressed.

Deputy-Lieutenants and their Officers, may charge Carts for carrying Powder and other Materials at 6 *d. per Mile*; and for a Horse employed out of the Cart, 1 *d. per Mile*.

There were several Acts of Parliament made in the Reign of King *William* the Third, for raising the

the Militia annually ; and if the King drew out the Militia into actual Service, the Persons charged were to provide each their Soldier a Month's Pay in Hand.

By 8 & 9 W. 3. Papists, or reputed Papists, and Persons refusing to take the Oaths, being charged in respect of their Estates to the finding of Horse or Foot, and Arms, the Lieutenants or Deputy-Lieutenants of the County or Division where such Estates lie, may appoint such Persons as they shall think fit, to furnish one or more Horseman, or Foot-Soldiers and Arms for the said Estates, and may charge the Estates with 8 *l.* for a Horseman, and 30 *s.* for every Foot-Soldier and Arms, to be paid to the Persons that shall set forth the same. And if the Persons so chargeable, neglect or refuse to pay the same on Demand, the said Lieutenants, or Deputy-Lieutenants, may levy it by Distress and Sale of Goods, &c.

Where two or more Persons are charged to find Horse or Foot Soldiers and Arms, three or more Deputy-Lieutenants of the County, &c. may direct who shall find the Horse and Arms, or Foot-Soldier and Arms, and who shall be the Contributors, and settle the Payments by every Contributor, &c. And if such Contributor, or his Tenant shall not pay his Proportion upon Demand, the Deputy-Lieutenants may levy the same by Distress, &c. and the Tenant may deduct the Sum charged out of the Rent payable to his Landlord.

In the late and present Reign, many Acts of Parliament have been made for raising the Militia ; but they only revive the Statutes of King Charles the Second, except only what relates to the more effectual arming of Horse and Foot, already mentioned.

I shall finish this Head with the Ordinance of the Lords and Commons passed in the Year 1660. for raising of 70,000 *l.* a Month, towards Payment and Satisfaction of the Army, &c. a fourth Part whereof may be annually levied by Lords Lieutenants of Counties, and Deputy-Lieutenants, for furnishing Ammunition, Trophy-Money, &c. for the Militia.

This Ordinance makes an Assessment (for three Months) of the Sums following, to be paid by the several Counties of England, &c. *per mensem, viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Upon the County of Bedford, the Sum of	0933	06	08
The County of Berks	1088	17	10
— of Buckingham	1283	06	08
— of Cambridge	1102	10	00
The Isle of Ely	0367	10	00
The County of Chester.	0770	00	00
The City of Chester.	0085	11	02
The County of Cornwall	1633	06	08
— of Cumberland	0108	00	00
— of Derby	0933	06	08
— of Devon	3003	15	06
The City of Exon in Com. Devon	0107	06	08
The County of Dorset	1311	10	06
Town of Pool	0010	14	00
The County of Durham	0153	14	04
— of Essex	3500	00	00
— of Gloucester	1626	06	08
City of Gloucester	0162	11	02
The County of Hereford	1166	13	04
— of Hertford	1400	00	00
— of Huntington	0622	04	06

# The Gentleman's Law.

335.

l. s. d.

The County of Kent, and City of	}	3655	11	02
Canterbury				
— of Lancaster		0933	06	08
— of Leicester		1088	17	08
— of Lincoln, with the City of	}	2722	04	10
Lincoln				
The City of London		4666	13	04
The County of Middlesex		1788	17	10
— of Monmouth		0466	13	04
— of Northampton		1400	00	00
— of Nottingham		0903	04	04
The Town of Nottingham		0030	02	04
The County of Norfolk		3624	08	10
City of Norwich		0186	13	04
The County of Northumberland		0179	19	10
Town of Newcastle		0035	11	08
The County of Oxon		1127	15	06
— of Rutland		0272	04	06
— of Salop		1322	04	04
— of Stafford		0919	06	08
The City of Litchfield		0014	00	00
The County of Somerset		2722	04	06
The City of Bristol		0171	02	02
The County of Southampton		2012	04	04
— of Suffolk		3655	11	02
— of Surrey		1565	05	06
The Borough of Southwark		0184	14	06
The County of Sussex		1905	11	02
— of Warwick, with the City	}	1244	08	10
of Coventry				
— of Worcester, and the City	}	1244	08	10
of Worcester				
— of Wilts		1944	08	10
— of Westmorland		0073	19	04
— of York, and the City of	}	3043	08	10
York.				

The



	l.	s.	d.
The Town and County of Kingston upon Hull	0067	13	04
The twelve Counties of Wales,			
Town of Harverford-West, and Berwick upon Tweed	3233	00	02

N. B. London may raise yearly the whole Month's Assessment above-mentioned.

The Militia of Horse and Foot are reputed to be about two hundred thousand in *England* and *Wales*. Justices of Peace of every County are subser-  
vient to Lord Lieutenants, and Deputy-Lieutenants; and are by their Orders, to issue Warrants to High Constables, Petty Constables, and Tithing-Men, &c.

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## C H A P. XV.

Of JUSTICES of PEACE, and their Original,  
Authority, &c.

Justices of Peace, *Polydore Virgil* tells us, had their Beginning in the Reign of *William the Conqueror*; but my Lord *Coke* is of Opinion, That in the sixth Year of *Ed. 1. Prima fuit institutio Justiciariorum pro pace conservanda*. Mr. *Prynne* makes it appear, That in the Reign of *Hen. 3.* after the Agreement made between that King and his Barons, Guardians *ad pacem conservandam* were constituted. And Sir *Henry Spelman* was of a contrary Opinion from all these, *viz.* That they were not made until the Beginning of the Reign of *Edw. 3.* when they were thought necessary for suppressing Commotions which might happen upon the Dethroning of King *Ed. 2.*

In the 34 *Ed. 3.* the Number of Justices of Peace was limited to six in every County, who should have Power, by Commission, to hear and determine Matters relating to the Peace; of which Number two were to be of the best Quality, two Knights, and two Men of the Law; and they were to sit four Times in the Year.

By 14 *R. 2.* eight Justices of Peace were to be assign'd in every County. And the Number of Justices has been greatly increas'd since their first Institution. Mr. *Lambard* above One hundred  
Z Years

Years since, complaining of the excessive Number; and after him Sir *Henry Spelman* takes Notice, That there were above threescore in each County.

They are now without Limitation, and this prodigious Encrease, with the unsuitable Appointment many Times made of Persons for this Trust, have rendred the Office contemptible in the Eye of our best Gentry, for whom it was originally intended.

Therefore some Authors are for having the Number reduc'd to the old Standard, viz. That in each County there should be eight Honorary Justices constituted of Men of the best Quality, who should not be oblig'd to an Attendance any farther than their Zeal for Justice, and Love for their Country, shall incline them; and the like Number of acting Justices, capable of Business, who should constantly attend, be entitled to a Reward for their Pains, and be subject to Penalties upon any Neglect, without a reasonable Excuse.

By the 12 R. 2. a Reward is order'd of 4s. a Day for Justices of Peace in Sessions, and 2s. *per Diem* to the Clerk of the Peace, so long as the Sessions continues, to be paid by the Sheriffs: And since by particular Statutes they are allotted Part of the Forfeitures upon Conviction of Offenders. And by 12 R. 2. and several other Statutes, they are to be Men of the best Reputation, of good Estates, and resident in the County.

Justices of Peace are to be the most sufficient Persons in the County, by 2 H. 5. And by 18 H. 6. they are to have 20 l. *per Annum* in Lands, as a Qualification, and if they act without such Qualification they shall forfeit the Sum of 20 l.

Justices

Justices are to hold their Sessions four Times a Year, viz. the first Week after *Michaelmas*, the *Epiphany*, *Easter*, and *St. Thomas the Martyr*, call'd *Becket*, being the 7th Day of *July*, by 2 H. 5. And this Court of Quarter-Sessions, as *Sir Edward Coke* observes, is such a Form of subordinate Government for the Quiet of the Realm, that if duly executed no Part of the known World has the like.

Justices of Peace are Judges of Record; they have Power to hear and determine Felonies and Trespasses, &c. and to inflict Punishments, 18 Ed. 3. But if a Commission of Oyer and Terminer issues to hear and determine Felonies, that determines the Commissions of Justices of Peace as to Felonies, but not as to the Peace, &c. And Justices of the Peace in the Sessions are to adjourn Matters of Difficulty to the Judges of Assize.

For Petty-Larceny, and other small Felonies, the Justices in their Quarter-Sessions usually try Offenders, or they may proceed in any Case where a Felony is limited by any Statute to be heard by them; and not otherwise; and they cannot hold Cognizance of Pleas upon Penal Statutes, without an exprefs Power given them by those Acts.

By 1 Ph. & M. Justices of Peace are to certify Examinations in Homicide and Felony to the Justices of Gaol-Delivery, and therefore the Sessions does not proceed to determine great Felonies. Justices generally in all Cases may take the Examinations, commit the Offenders, and bind over the Prosecutors to the Assizes, and certify their Proceedings.

A Justice may send his Warrant to apprehend any Person accus'd of Felony, tho' the Accusation should be false: But he is first to examine the Person upon Oath which requires it.



And where he hath a Jurisdiction his Warrant is not to be disputed by any Constable, who may be indicted for not executing it. *2 Rol. Rep. 78.* But a Justice of Peace may not grant a Warrant against a Peer of the Realm, nor grant a Blank Warrant where he knows neither the Party nor the Matter; if he does, he will be liable to a Fine.

Where a Riot, Affray, Assault, or other Breach of the Peace is committed in the Presence of a Justice of Peace, he may command any Person to apprehend the Offenders; and his Precept by Word of Mouth, in this Case, is of equal Authority with his Command in Writing.

But in his own Case he is not Judge, and ought not to execute his Office with respect to himself, unless he is assaulted, and then he may commit the Offender; he may likewise record a forcible Entry upon his own Possession.

A Justice shall not be punish'd for any Thing done by him in Sessions as a Judge. One Justice cannot commit another for Breach of the Peace, but the Sessions may. And an Indictment will lie in Sessions against an Offender abusing a Justice.

Justices of Peace are not to compound Recognizances, &c. nor take Money for making Agreements, &c. But they may make and persuade an Agreement in Petty Quarrels between Party and Party, or Breaches of the Peace, where the King is not entitled to a Fine. *Noy. Rep. 103.*

Justices of Peace are to meddle only with such Matters as the Statutes empower them. *Sav. Rep. 124.* And the particular Power of Justices of Peace by Statute, you'll find summ'd up by way of Abstract, in the following Articles.

*Alchouses.*

Justices are to issue Warrants for levying 20 s. on Persons keeping Ale-houses without Licence, 10 s. of Victuallers, &c. permitting Tippling, 3 s. 4 d. on Tipplers; a Sum not above 40 s. nor under 10 s. for selling Beer in Vessels not mark'd, or under Measure: To take Recognizances for good Order; suppress Ale-houses, &c. 5 & 6 Ed. 6. 21 Jac. 1. 3 Car. 1. 11 & 12 W. 3.

To reconcile Differences between Masters and Apprentices; commit disorderly Apprentices; to consent to the Binding poor Boys out Apprentice, Apprentices to the Sea-Service, &c. 5 & 43 Eliz. 2 Ann.

Arms. { To bind to the Good Behaviour Persons riding arm'd, &c. 2 Ed. 3.

Badgers, { Are to be licenc'd by three Justices in Sessions. 5 Eliz.

Bail. { Two Justices to bail for Manslaughter, Felony, &c. whereailable by Law. 1 & 2 Ph. & M.

One Justice may enter Bake-houses and examine Bread; and if it be deficient in Goodness or Weight, to be seisd and given to the Poor: And a Penalty of 5s. per Ounce is inflicted for Underweight. Justices are to ascertain the Assize and Weight of Bread. 18 Ann. 1 Georg.

To examine Bastardy, two next Justices to make Orders for keeping the Child, charge the Father or Mother with Weekly Payments, seise their Goods, &c. for that Purpose; and commit lewd Women to the House of Correction, &c. 18 Eliz. 13 & 14 Car. 2.

Brewers. See *Excise*.

Justices in Sessions may make Assessments for Repairs of Bridges, determine Annoyances, &c. 22 H. 8.

Bridges.

To enter Houses and search for unlawful Bullion, or Coin melted down. 6 & 7 W. 3.

Bullion.

To levy 6s. 8d. on Butchers killing Meat on a Sunday: And selling corrupt Meat they shall be fin'd. 3 Car. 1. 15 Car. 2.

Butchers.

To levy 5l. on Taylors making or using Cloth Buttons, or Button-holes. 18 Ann.

Buttons.

To

To levy the Penalty of 5 l. on Carriers, &c. travelling with above five Horses at length, by Distress on any of the Beasts: And any Person may distrain. Also to levy 5 l. on Waggoners, &c. taking more for Carriage of Goods than allow'd by Justices. And 20 s. of Carriers, &c. travelling on a Sunday. 3 Car. 1. 3 & 4 W. & M. 1 Georg.

To take Recognizances with Sureties to pay Costs if the Conviction be affirm'd, on a Certiorari. 4 & 5 W. & M.

Persons not repairing to Church every Sunday to forfeit 1 s. for every Offence. Tipling in an Ale-house of a Sunday to forfeit 3 s. 4 d. and the Master of the House 10 s. Disturbing a Congregation, or Misusing a Teacher, to forfeit 20 l. all leviable by Justices. 1 Eliz. 1 Jac. 1. 1 W. & M.

To levy 20 s. on Clothiers not paying their Work-People in Money. The same Penalty on Buyers refusing to take Cloth according to the Measure, mark'd on the Seal by the Mill-man: But if it contains not the Quantity, the Seller shall forfeit a sixth Part;



Clothiers.

and Owners of Mills are to take an Oath for true Admeasurement, under the Penalty of 20*l*. Makers of deceitful Cloth to forfeit 5*l*. Faulty Cloths expos'd to Sale, are liable to a Forfeiture; and Justices are to appoint Overseers and Searchers of Cloth. 3 & 4. 5 & 6 Ed. 6. 21 Jac. 1. 10 Ann. 1 Georg.

Coaches.

To levy 20*s*. on Coachmen demanding more than their Fare, giving abusive Language, &c. And to order Satisfaction for Persons refusing to pay a Coachman his Fare, defacing Coaches, &c. 9 Ann. 1 Georg.

Constables.

To levy 20*s*. on Constables for not apprehending Vagrants; and 10*s*. for not removing Beggars, &c. in the Streets. To levy 40*s*. on them for not putting the A&ts in Force against unlicenc'd Alehouse-keepers. To appoint and swear Constables, &c. 13 Car. 2. 11 & 12 W. 3. 12 Ann.

Coroners.

A Coroner not doing his Duty where a Person is kill'd, to forfeit 40*s*. to be levied by Justices. 1 H. 8.

Cottages.

Cottages.

Persons erecting Cottages without four Acres of Land, (except in Cities, or for Labourers in Mines, Warreners, Cottages erected on the Waste, by order of Justices) to forfeit 10 *l.* leviable by the Sessions. Owners of Cottages having more Families than one, to forfeit 10 *s.* a Month. 31 *Eliz.*

County-Court.

Two Justices to view the Estreats of Sheriffs before they issue them out of the County-Court. Officers levying more than is contain'd in the Estreats to forfeit 40 *s.* And a Defendant not having lawful Summons in the County-Court, is liable to the same Forfeiture. 11 *H. 7.*

Customs.

One Justice may commit Persons resisting the Officers of the Customs 'till the Quarter-Sessions, where they may be fin'd 100 *l.* issue Warrants for apprehending Persons, seising Goods, &c. where they are landed without Entry; commit Carmen, &c. 13 & 14 *Car. 2.*

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Deer.

To levy the Penalty of 20*l.* for unlawful Hunting of Deer in any Park, &c. and 30*l.* for taking and killing, by Distress. Grant Warrants to search for Deer stolen: And by an old Statute to levy 40*s.* on Persons selling and buying Deer to sell again; except brought from beyond Sea. *1 Fac. 1. 3 & 4 W. & M.*

To levy 5*s.* on Persons convicted of Drunkenness; and for want of Distress, the Offender to sit in the Stocks six Hours. *21 Fac. 1.*

To put the Laws in Execution relating to the Excise, and levy the 50*l.* of Brewers, for sitting up or altering any Cooler, Copper, &c. without giving Notice, or keeping any private Storehouse, and all other Penalties relating to the Duty of Excise. *12 & 15 Car. 2. &c. See Chap. 7. of Excise.*

Fire-Cocks, and Engines. To be kept in Parishes within the Weekly Bills of Mortality, under the Penalty of 10*l.* leviable on Churchwardens, &c. *6 Ann.*

To levy a Penalty not exceeding 10 s. of Persons taking Fish in a River without the Owner's Consent, for the Poor, and award treble Damages to the Party. To search for and seize Nets, Angles, &c. of Persons not being Makers and Sellers; to levy a Sum not under 20 s. nor above 5 l. of Persons taking Salmon or Trout out of Season, Salmon under sixteen Inches long, and Trout eight Inches, &c. 20 s. for using Nets to destroy Spawn or Fry of Fish. 5 l. for fishing with Nets for Salmon, &c. the Meshes being under two Inches and a half Square from Knot to Knot, &c. And to imprison for three Months Offenders breaking down Fish-Ponds, &c. 1 & 5 Eliz. 22 & 23 Car. 2. 4 & 5 W. & M. 4 & 5 Ann. 1 Georg.

Forcible Entry. One Justice may imprison Persons making a forcible Entry on Lands, &c. command the Sheriff to return a Jury to enquire, order Restitution, &c. And the Sheriff, &c. neglecting their Duties in Case of forcible Entries, to forfeit 20 l. recoverable in the Quarter-Sessions. 15 R. 2. 8 H. 6. 21 Jac. 1.

Forestallers.

## Forefallers.

Forefallers, Ingrossers and Regrators, forfeit the Value of the Goods bought, and are to be imprison'd two Months for the first Offence; for the second Offence double Value, and six Months Imprisonment; the third Offence to forfeit all their Goods, and be set on the Pillory, &c. 5 & 6 Ed. 6. Inquirable in the Sessions.

## Game.

One Justice may grant a Warrant to Game-keepers, &c. to search the Houses of Persons unqualified to keep Guns, &c. Persons not qualified keeping Greyhounds, Setting-Dogs, &c. to forfeit 5 *l.* Higlers, Carriers, Victuallers, &c. having in their Custody, Hare, Pheasant, Partridge, &c. or buying or selling, to forfeit 5 *l.* Gamekeepers to be licenc'd, and their Names entred with the Clerk of the Peace, under the Penalty of 5 *l.* Gamekeepers are to be Persons qualified, or Servants to Lords of Manors, and not Tenants under the like Penalty. Persons keeping Guns, &c. to kill Game, not having 100 *l.* per Ann. of Inheritance, or Lease of 99 Years of 150 *l.* per Ann. to forfeit 10 *l.* 22 & 23 Car. 2. 4 & 5 W. & M. 5 Ann. 3 Georg.

Gaming.



Gaming.

A Justice of Peace to enter unlawful Gaming-Houses, and commit the Keepers of such Houses; and the Sessions may inflict a Penalty of 40 s. a Day for keeping them, and 6 s. 8 d. a Time on Persons resorting to them. To bind to the Good Behaviour Gamesters having no visible Estate. 33 H. 8. 9 Ann.

Gaols.

Justices are to commit to the Common Gaol: To issue Warrants for seizing and selling Goods of Offenders, to bear the Expence of their Conveyance to Gaol; to levy Money for building and repairing Gaols. 5 H. 4. 3 Jac. 1. 11 & 12 W. 3.

Hawkers and Pedlars.

To levy the Penalty of 12 l. of Hawkens, Pedlars, &c. trading without Licence; and 5 l. on Persons refusing to produce a Licence. 8 & 9 W. 3.

Hedge-breakers.

Hedge-breakers, Robbers of Orchards, &c. to render Damages, and pay a Sum not exceeding 10 s. as a Justice shall appoint, or be sent to the House of Correction: Persons not giving a good Account how they come by stolen Wood, are liable to the same Penalty; Buyers of Wood stolen to

to pay treble Value. And Persons cutting or spoiling Timber-Trees, Hedge-breakers, Fruit-Trees, &c. to be sent to the House of Correction for three Months. 43 Eliz. 15 Car. 2. 1 Georg.

To levy the Penalty of 5 l. on Surveyors of the Highways neglecting their Duty in Viewing the Roads, &c. 10 s. for not erecting Posts with Inscriptions where Cross ways meet. 40 s. on Surveyors not making Presentments every four Months. 10 s. a Day on Persons keeping Teams, not sending them to Work, and 1 s. of Cottagers making Default. 20 s. on Persons pulling up Posts, and other Securities of a Horseway. Not exceeding 5 l. nor under 10 s. of Persons laying Soil in the Highways. 2 s. 6 d. for every eight Yards of Ditches uncower'd. Two Justices to nominate Surveyors. Hold a Sessions for the Highways once in four Months, under the Penalty of 5 l. And the Sessions may order Rates for repairing the Highways. 2 & 3 Ph. & M. 5 Eliz. 13 & 14 Car. 2. 3 & 4 W. & M. 1 Geo.

### Highways.

Persons

Horses.

Persons selling Horses in a Fair or Market, to produce Vouchers of Sale to Toll-takers, under the Penalty of 5 *l.* leviable by Justices. Justices to take the Oaths of Witnesses to prove a stolen Horse to be the Owner's, &c. 31 *Elix.*

House of Correction.

Justices in their Sessions to make Orders for erecting of Houses of Correction, for Government of the same, and Punishment of Offenders, &c. 39 *Elix.* Not being a House of Correction in every County, the Justices to forfeit 5 *l.* 1 *Jac.* 1. A Justice may commit any idle Person to the House of Correction.

Jurors.

To take Returns of Juries from Constables; and at *Midsummer*-Sessions yearly to issue Warrants to Constables to prepare Lists of Freeholders to serve on Juries, between the Age of 21 and 70. Petty-Constables not returning Lists, &c. to forfeit 5 *l.* 7 & 8 *W.* 3. 3 & 4 *Ann.*

Labourers.

One Justice may imprison Labourers, departing without Licence, for a Month. Justices in Sessions to assess the Wages of Labourers, &c. 5 *Elix.* 1 *Jac.* 1.

Leather.

Leather.

Searchers and Triers of Leather to be appointed in all Places by Mayors, Head Officers, &c. under the Penalty of 5*l*. Not taking upon them the Office to forfeit 10*l*. Taking Bribes 20*l*. Persons withstanding the Search to forfeit 5*l*. Buying rann'd Leather before search'd, the same to be forfeited, &c. all recoverable in the Quarter-Sessions. 1 *Jac.* 1.

Malt.

One Justice may levy the Penalty of 10*l*. of Malsters not entering their Malt; and two Justices may levy the 50*l*. for altering steeping Vessels, without giving Notice to the Office of Excise, &c. But the Penalties may be mitigated, so as not to be less than double Duty, &c. 13 & 14 *W.* 3. *Vide Chap. Excise.*

By an old Statute, Justices in Sessions may restrain a superfluous Number of Malsters. Examine into the Goodness of Malt, &c. 39 *Eliz.*

Oaths.

Two Justices to administer the Oaths of Allegiance, &c. To summon Persons suspected of Disaffection to the Government, and tender them the Oath of Abjuration: To summon any Person to appear and take the Oaths. 7 *Jac.* 1. 6 *Ann.*

Perjury.

Twenty Pounds Fine, and six Months Imprisonment, Pillory, &c. for wilful Perjury; and 40*l.* for suborning Evidences to give Testimony, Imprisonment, and Pillory, &c. inflicted by the Quarter-Sessions. 5 *Eliz.*

Justices may command Persons infected with the Plague to keep within; cause such to be whip'd as go abroad, to tax Inhabitants towards Relief of poor Persons having the Plague, &c. 1 *Jac. 1.*

One Justice may consent to Overseers, &c. setting up a Trade for employing the Poor. To issue his Warrant for relieving a poor Person by a weekly Allowance. Two Justices to appoint Overseers of the Poor, in *Easter-week*, on Pain of 5*l.* Overseers to meet once a Month under the Penalty of 20*s.* Not giving up their Accounts, to be committed. Justices to make Orders for removing Persons coming into Parishes and renting under 10*l.* a Year, &c. but Poor may remove to another Parish by Certificate. Overseers refusing to receive a Person remov'd by Order of Justices, to forfeit 5*l.* Justices may make a Tax for Relief of the Poor, and

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also



also for Relief of poor Prisoners.  
**Poor.** having Relief to wear  
 Badges, or be sent to the House  
 of Correction. 48 Eliz. 13 &  
 12 Car. 2. 3 & 4 W. & M. 8 &  
 9 W. 3.

Two Justices to administer the  
 Oaths to the Post-Master-Gen-  
 eral, and all Officers of the Post-  
**Post-Office:** Office, and all Sums under 5*l*.  
 due for Postage of Letters, are  
 recoverable before two Justices in  
 the same Manner as small Tithes.  
 12 Car. 2. 9 Ann. See *Tithes*.

**Prophecy.** Publishers of false Prophecies,  
 to forfeit 10*l*. and be imprison'd a  
 Year, by the Court of Quarter-  
 Sessions. 5 Eliz.

A Justice may commit Popish  
**Recusants,** Recusants refusing to take the  
 Oaths; and refusing to appear  
 before two Justices, and make the  
 Declaration, - 30 Car. 2. Their  
 Arms, &c. to be seized: Persons  
 concealing Arms or Horses of Pa-  
 pists, to be committed. Recu-  
 sants not repairing to their usual  
 Places of Residence, or removing  
 above five Miles from thence, to  
 abjure the Kingdom. The Sessions  
 to make Proclamation for Popish  
 Recusants to surrender themselves.  
 35 Eliz. 3 & 7 Jac. 1. 1 W. & M.

Riots.

**Riots.** Two next Justices, with the Sheriff, and Power of the County, are to suppress Riots, and certify, &c. Persons guilty of heinous Riots, to suffer one Year's Imprisonment. One Justice to require Rioters assembled to the Number of twelve to disperse, and if they continue an Hour afterwards, they are guilty of Felony. 13 H. 4. 2 H. 8. 1 Geor.

**Robbery.** One Justice is to examine Persons robb'd upon Oath, and take Security to prosecute; then grant Warrants to make Hue and Cry after the Robbers, &c. Two Justices to set a Tax on the Hundred where the Robbery is committed. 27 Eliz. 28 Ed. 3.

**Sacraments.** Three Justices to take Informations against Contemners of the Holy Sacrament; send out a Writ of *Capias exigend*, &c. against them, and upon their appearing may fine and imprison them. 1 Ed. 6.

**Scavengers.** One Justice may levy a Penalty of 10*l.* on Scavengers duly chosen, refusing to serve. 40*s.* for not bringing Carts daily to take away the Dirt. 3*s.* 4*d.* a Day of Housekeepers not sweeping the Streets *Wednesdays* and *Fridays*.

**Scavengers.**

5 s. for laying Heaps of Dirt, &c. before Houses. 40 s. a Perch on Persons not paying the Ground before their Houses. Scavengers Tax to be allow'd by two Justices. The Quarter-Sessions may appoint Scavengers, and order Assessments in any City or Market-Town. Scavengers refusing to account, to be committed. 2 W. & M. 1 Georg.

**Servants.**

Servants departing without giving a Quarter's Warning, to be bound over to the Sessions; and Masters putting away Servants without giving a Quarter's Warning to forfeit 40 s. Servants abus'd, to be discharg'd by Justices. Servants assaulting their Masters, to be imprison'd one Year. Masters giving greater Wages than allow'd by Justices, to forfeit 5 l. and the Servants taking it to be imprison'd Twenty-one Days. Unmarried Persons refusing to go to Service, to be sent to the House of Correction. 5 Eliz.

**Shoemakers.**

Searchers to be appointed of Shoemakers Wares, &c. by the Shoemakers Company in London, under the Penalty of 40 s. Shoemakers not making their Wares of good Leather, and not sowing them well, to forfeit 3 s. 4 d. 1 Jac. 1.

Soldiers.

One Justice may relieve such as have more Soldiers quarter'd on them than they ought; levy the Penalties for Game, &c. kill'd by Soldiers without Leave; commit Deserters to Gaol; levy the Penalty of 5 l. for harbouring Deserters, &c. Commit Persons permitting themselves to be falsly muster'd: And Justices in Sessions may tax Parishes towards Relief of maim'd Soldiers, &c. 43 Eliz. 12 Ann. 1 Georg. See Chap. 13. Of the Laws of War, &c.

To levy the Penalty of 5 l. for making or selling of Squibs, &c. and 20 s. on Persons throwing them, or permitting them to be thrown from Houses, &c. 9 & 10 W. 3.

To levy 5 s. of Persons doing any worldly Labour on *Sundays*; and the same Penalty on Travelers, and Persons using Boats, without the Allowance of Justices; Persons present at Bull-baitings, &c. on a *Sunday*, to forfeit 3 s. 4 d. 29 Car. 2.

*Sunday.*

One Justice to levy the Penalty of 1 s. for the first Offence, double for the second, &c. of Servants, Labourers, Common Swearing. & Soldiers, &c. and 2 s. of others, &c. or let the Offenders in the Stocks. Justice neglecting his Duty to forfeit 5 l. 21 Jac. 1. 6 & 7 W. 3.

Two Justices are to levy the Penalty of 50 l. on Tanners, &c. not giving Notice of Tan-houses, &c. 20 l. for using private Tan-Yards. 10 l. for refusing Officers Entrance; and the Quarter-Sessions may inflict a Penalty of 10 l. on Persons hastening the Tanning of Leather by unkind Heats, &c. 1 Jac. 1. 9 Ann.

Small Tithes under 40 s. withheld, to be determin'd by two Justices on Complaint; Persons to be summon'd, examin'd on Oath, Tithes. &c. and Allowance to be made for the Tithes, with 10 s. Costs; Quakers refusing to pay Tithes under 10 l. likewise determinable by Justices. 7 & 8 W. 3.

Vagrants.



One Justice to examine Vagrants, grant Passes for their Conveyance to their Places of Birth, &c. give Certificates to Constables ascertaining how they are to be pass'd, &c. send Vagrants wandering after convey'd to the House of Correction. To levy the Penalty of 5 *l.* on Masters of Ships refusing to transport back Vagrants. And the like Penalty for importing; to levy 20 *s.* on Constables neglecting their Duties, and 10 *s.* for not apprehending Vagrants. And Justices in Sessions to appoint Rates for conveying of Vagrants, &c. 12 *Ann.*

Vagrants.

To levy 5 *s.* of Persons keeping Weights not according to the Standard. 5 *l.* of Clerks of Markets, &c. sealing Weights not agreeable to the Standard. Every City, Town, &c. to have a Common Balance, &c. 8 *H.* 6. 16 *Car.* 1.

Weights and Measures.

Persons employ'd in the Wool-  
len Manufactures, imbezilling  
Yarn, or other Materials, to for-  
feit double the Value, or be or-  
der'd to be whip'd by Justices,

are to be sent to the House of Correction. To  
levy the Penalty of 7s. 6d. on Ma-  
sters of Ships refusing to trans-  
port back Vagrants. And the  
Penalty for importing; to  
levy 10s. on Consellers neglect-  
ing their Duties, and 10s. for not  
apprehending Vagrants. And  
Penalty for conveying of Vagrants.



to levy 10s. of Persons keeping  
Vagrants according to the  
Standard. 7s. 6d. of Clerks of Mar-  
riage for failing Weights not a-  
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ry City, Town, &c. to have a  
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